

York 1:16,17 3:13 3:13 128:2,6,10	1987 6:21 1996 8:5,21 17:7,19 25:21 30:9 57:2 57:19 58:6,7 61:4 73:7 77:4 78:24 87:4 89:19 93:8 97:22 114:8 115:5 120:15 135:12 1997 5:10 8:6 25:21 39:18 41:6 42:24 53:4 57:23 58:4,9 61:4 62:8 73:7 78:24 84:1 87:5 108:5 114:8 115:5 120:15 1998 12:2 13:22	3 74:16,24 75:1 140:21 3:02 139:8 30 41:22 45:17 30(b)6 96:13 30,000 49:6 300 42:22 43:12 35 66:11 36 2:6 3:15	95 17:17 96 8:25 9:19 11:5 14:3,12 15:6 41:8 60:19 87:8 88:9 108:25 97 8:21,25 9:19 11:5 14:3,12 15:6 17:19 30:9 42:15 60:19 62:1,20 65:14 77:4 84:22 87:8 88:9 89:19 97:22 135:12 97-cv-3496 1:2 99 100:13
Z			
Zappola 9:9 10:14 Zaro 66:2			
\$			
\$10,000 129:16 \$100,000 138:2,4 \$20 126:12,15 \$20,000 129:16 131:21 \$25 21:18,21 57:18 \$30,000 36:17 \$325,000 75:9 \$400,000 57:22 \$60,000 45:22			
0			
0000001 111:23 07078 3:5 07102-4056 3:8 07728 3:16			
1			
1 27:13,20 54:18 69:4 75:20 113:5 1,200 58:2 10:10 2:7 100 3:8 49:7 12 58:2 127 4:14 13000 128:20 131:22 13005 137:21,24 13008 127:25 13017 128:9 15 57:16 83:8,13 89:11,25 135:20 150 3:4 16 80:16 17 128:12 18732 91:14 19103-3222 3:12 1980s 108:15 1986 108:17	2 2 27:12,13 28:23,25 74:15,21 75:1 129:4 2A2 128:21 2B 131:23 2F 114:16 2,400 57:5 20 36:17 58:15 125:25 200 57:3 2000 3:11 26:6 92:14 2000s 13:25 2004 7:4,4 2008 83:8 87:19 88:2 2009 80:9 2010 2:7 111:22 139:14 140:22 2013 140:21 21 15:7 23 2:7 43:9 24 80:8 26 4:9 69:6,10 75:20 101:19 27 111:22 28 80:16 140:22	4 4 80:7 40 41:22 45:17 127:5 5 5 4:4 83:6 87:16 113:1 125:14 132:8 5A 137:25 50 45:22 50/50 7:22 14:11 124:23 6 6 127:20 136:9 60 108:23 109:6 60/40 70:22 69 4:9 7 7 17:7 129:4 74 4:10,11 8 8 53:4 111:24 8th 42:24 117:17 80 4:12 80s 71:25 80/20 127:4 83 4:13 86 108:25 9 9 53:4 9th 42:24 117:17 90s 24:19	
	3		

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No.  
97-cv-3496 (DRD) (MAS)

WALSH SECURITIES, INC., :  
:   
Plaintiff, :   
: VOLUME II  
vs. : DEPOSITION OF:  
: ROBERT AGEL

CRISTO PROPERTY MANAGEMENT,  
LTD., a/k/a G.J.L. LIMITED;  
OAKWOOD PROPERTIES, INC.;  
NATIONAL HOME FUNDING, INC.;  
CAPITAL ASSETS PROPERTY  
MANAGEMENT & INVESTMENT CO.,  
INC.; CAPITAL ASSETS PROPERTY  
MANAGEMENT, L.L.C.; WILLIAM  
KANE; GARY GRIESER; ROBERT  
SKOWRENSKI, II; RICHARD CALANNI;  
RICHARD DIBENEDETTO; JAMES R.  
BROWN; THOMAS BRODO; ROLAND  
PIERSON; STANLEY YACKER, ESQ.;  
MICHAEL ALFIERI, ESQ.; RICHARD  
PEPSNY, ESQ.; ANTHONY M.  
CICALESE, ESQ.; LAWRENCE CUZZI;  
ANTHONY D'APOLITO; DAP CONSULTING,  
INC.; COMMONWEALTH LAND TITLE  
INSURANCE CO.; NATIONS TITLE  
INSURANCE OF NEW YORK, INC.;  
FIDELITY NATIONAL TITLE  
INSURANCE CO. OF NEW YORK;  
COASTAL TITLE AGENCY; DONNA  
PEPSNY; WEICHERT REALTORS; and  
VECCHIO REALTY, INC., D/B/A  
MURPHY REALTY BETTER HOMES  
And GARDENS

Defendants. :  
:  
:

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Page 142

1

TRANSCRIPT of the stenographic notes of

2

the proceedings in the above-entitled matter, as

3

taken by and before JANET BAILYN, a Certified

4

Shorthand Reporter and Notary Public of the State of

5

New Jersey, held at the office of MANNING, CALIENDO &

6

THOMSON, 36 West Main Street, Freehold, New Jersey,

7

on August 5, 2010, commencing at 10:25 in the

8

forenoon.

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Page 144

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INDEX

2

WITNESS DIRECT CROSS REDIRECT RECROSS

3

ROBERT AGEL

4

BY MR. MAGNANINI 145 264

BY MR. KOTT 252 267

5

6

7

EXHIBITS

8

NUMBER DESCRIPTION PAGE

9

Coastal-7 Invoice dated 12/9/96 155

Coastal-8 Letter dated 1/14/97 156

10

Coastal-9 Letter dated 4/9/97 156

Coastal-10 Letter dated 1/28/97 156

11

Coastal-11 Copy of Check 156

Coastal-12 Deed 156

12

Coastal-13 Letter dated 7/15/97 156

Coastal-14 Letter dated 5/29/97 157

13

Coastal-15 Copy of Check dated 4/19/97 185

14

15

16

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Page 143

1

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Of New York

19

20

21

22

23

24

25

Page 145

1

ROBERT A G E L, having been duly sworn by the

2

Notary, testified as follows:

3

DIRECT EXAMINATION BY MR. MAGNANINI:

4

Q. Good morning, Mr. Agel. How are you?

5

A. Fine thanks. How are you?

6

Q. Good. First question: Did you get a

7

chance to review your transcript?

8

A. No.

9

Q. Normally you ask the question in case

10

there's something you want to change. Do you have

11

anything you recall you answered that you want to

12

change an answer to or add something?

13

A. No.

14

Q. Then we can just proceed. I have a

15

couple of follow-up questions so we will be less

16

coherent than usual jumping ahead.

17

MR. McGOWAN: I talked with personal

18

counsel late yesterday afternoon and indicated to him

19

that at least the beginning portion of this

20

deposition will be a continuation of the corporate

21

dep and that there may or may not come a point where

22

we're ready to go into the other. Because of some

23

miscommunication, I don't know, I thought he was

24

going to be available this afternoon if we got to

25

this point, he is not, but he's authorized me to

2 (Pages 142 to 145)

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Page 146

1 proceed with that on the theory maybe we can be done  
2 with it today.

3 Q. If that's good for you, Mr. Agel, we  
4 will knock it out.

5 A. Yes.

6 Q. Okay. One of the questions we had asked  
7 you, we had sent you that letter and you said you  
8 looked at it and that you probably didn't have any  
9 documents, but you said you were going to look for  
10 any other responsive documents. Did you find  
11 anything --

12 A. No.

13 Q. -- else? Okay. And then one of the  
14 questions I wasn't clear on: Do you still have any  
15 of the non-approved attorney lists from either  
16 Commonwealth or Fidelity?

17 A. From that time period?

18 Q. From that time period.

19 A. No.

20 Q. Okay. I guess because Lawyer's Title  
21 owns Commonwealth, you still have Lawyer's Title --  
22 not anymore. Okay. You're right. Fidelity owns  
23 Commonwealth.

24 A. There's no more Lawyer's Title.

25 Q. All right. One of the jump-around

Page 147

1 questions. Yesterday we deposed Mr. Pepsny and so he  
2 recalls having conversations with you about certain  
3 things. One of the questions I had asked him about  
4 though was that when Coastal Title did that filing  
5 of -- it turned out to be -- 150 different deeds and  
6 mortgages back in April of '97, a number of the deeds  
7 that were filed were what I'll call joint venture  
8 deeds; that is, they were a deed from the straw buyer  
9 of Kane's -- the property purchased by Mr. Kane's  
10 company and it divided 60 percent of that property  
11 and gave that to Capital Assets Property Management  
12 Company, which was, as we said, Mr. Grieser's  
13 company, and 40 percent to the mortgagee. And  
14 those --

15 MR. MCGOWAN: Not the mortgagee.

16 MR. MAGNANINI: The mortgagee.

17 MR. MCGOWAN: Right.

18 Q. Those deeds were recorded along with  
19 these other deeds, and I had asked Mr. Pepsny if he  
20 had ever had any discussions with you about those  
21 joint venture deeds. Do you recall ever discussing  
22 those joint venture deeds with Mr. Pepsny?

23 A. I don't recall whether it was Pepsny or  
24 Yacker. I did talk to someone about them because I  
25 wanted to know what they were all about, but I

Page 148

1 couldn't tell you whether it was Yacker or Pepsny.

2 Q. Do you recall talking to anybody about  
3 those deeds needed to be filed along with all of  
4 these other documents?

5 A. No. I needed to know who I was  
6 insuring, whether I was insuring the original  
7 mortgagor or whether they were insuring the -- we  
8 were insuring the second deed.

9 Q. The 60/40 split?

10 A. Correct.

11 Q. And who did -- who were you ultimately  
12 insuring?

13 A. The original purchaser, the purchase  
14 money mortgagor.

15 Q. And how did you determine that?

16 A. Through asking either Yacker or Pepsny.  
17 I don't recall which one.

18 Q. That one of the attorneys told you?

19 A. Yes.

20 Q. Okay. Because of all the various  
21 documents we have seen, we have seen title  
22 commitments issued on the Kane Company purchase of  
23 the property and then, as we talked about, the title  
24 commitment with the capital A in parenthesis --

25 A. Right.

Page 149

1 Q. -- on the sale, but I had not seen any  
2 commitments issued at all on any of those joints  
3 venture deeds.

4 A. No.

5 Q. Okay. When did you first learn about  
6 the joint venture deeds?

7 A. I couldn't tell you. I don't recall  
8 exactly when.

9 Q. One of the things we discovered when we  
10 were preparing for Mr. Pepsny's deposition was that  
11 he would order title commitments for the straw buyers  
12 even though he represented Kane's company, which had  
13 purchased the property from someone and then was  
14 selling it to the straw buyer. We have a number of  
15 documents, they're kind of preprinted order forms  
16 from law offices of Michael Alfieri -- Michael  
17 Alfieri to Coastal. One of the things circled on the  
18 bottom, title search, bring down, flood.

19 Why was Mr. Pepsny's office ordering  
20 title commitments for the buyers if he was  
21 representing the seller?

22 A. I have no idea. I don't recall that. I  
23 recall the orders coming in from Yacker.

24 Q. That's what we had seen, but as I said  
25 we started going through -- you find some amazing

3 (Pages 146 to 149)

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Page 150

1 things in 150,000 pieces of paper.  
 2 MR. MAGNANINI: Off the record a minute.  
 3 (A discussion takes place off the  
 4 record).

5 Q. Mr. Agel, I would like to show you what  
 6 was marked as King -- which was at Lorraine King's  
 7 deposition -- King-6, and I will represent to you  
 8 that we actually had the order form from Mr.  
 9 Alfieri's office requesting the title run. And as  
 10 you can see it's for a title insurance closing  
 11 protection letter and the various searches that you  
 12 would do, and then in turn we found this invoice  
 13 issued by I assume you, one of Coastal Title's  
 14 invoices.

15 A. Yes.

16 Q. And it was issued to Mr. Pepsny for --  
 17 excuse me for a minute -- for -- it's actually  
 18 property that was eventually purchased by a woman  
 19 named Jill Montanye 1017-1019 Bangs Avenue in Asbury  
 20 Park. So I was just trying to sort out why Mr.  
 21 Pepsny was ordering title on things for the buyers  
 22 and then Coastal was -- you were doing what you  
 23 should have been doing, you got a request, you did  
 24 the work, you sent them an invoice and then -- but it  
 25 was different than, you know, some of the ones which

Page 151

1 were ordered by Mr. Yacker or Mr. Cicalese who were  
 2 representing the straw buyer.

3 A. Right.

4 Q. Do you have any idea why Mr. Pepsny, who  
 5 was representing the seller, would have been ordering  
 6 the title?

7 A. No.

8 Q. Okay. Bizarre. And then one of the  
 9 other documents we have is actually a closing  
 10 protection letter with -- that was actually issued to  
 11 Mr. Pepsny as the approved attorney. And it's not  
 12 for the acquisition of a property by Mr. Kane's  
 13 companies. It's for the sale of the property to the  
 14 straw buyer, and so I would like to show you an  
 15 exhibit that was previously marked as King-5. I ask  
 16 you to take a look at that and see if you recognize  
 17 the document or the form of document.

18 A. Yes.

19 Q. What is it?

20 A. It's a closing service letter.

21 Q. Issued by Coastal Title?

22 A. Coastal Title Agency, yes.

23 Q. And it's issued to whom?

24 A. To National Home Funding. I guess you  
 25 would say insuring the actions of Pepsny.

Page 152

1 Q. And so, again, I was trying to determine  
 2 why Mr. Pepsny who told us he only represented Mr.  
 3 Kane's companies in the sale would be listed as the  
 4 closing agent for the buyer, Miss Montanye, on this  
 5 1017-1019 Bangs Avenue.

6 A. I don't know.

7 Q. Who prepared the closing service letters  
 8 at Coastal Title?

9 A. It would be a secretary. I couldn't  
 10 tell you who.

11 Q. Who --

12 A. I had a lot of employees back then.

13 Q. When you would review the -- what did  
 14 you do to review the closing service letter before  
 15 you sent it out?

16 A. Nothing.

17 Q. So you're -- basically you would get it,  
 18 sign it and then send it out the door?

19 A. Right.

20 Q. And then I think we asked you this  
 21 before, but this came actually from Coastal Title's  
 22 production. You can see by the Bates stamp CTC.

23 A. Yes.

24 Q. The reason it's not signed is because  
 25 this was a file copy?

Page 153

1 A. File copy, correct.

2 Q. Okay. One of the thing Mr. Pepsny had  
 3 testified to was that I guess initially Mr. Kane  
 4 ordered or I guess Mr. Pepsny ordered closing title  
 5 insurance for title commitments for the Kane  
 6 purchases, and then they would also order them for  
 7 the sale and so -- and what I recall you testifying  
 8 was that because of I guess a request by Mr. Pepsny  
 9 or Mr. Kane about confusion at the lender you would  
 10 issue the commitment on the purchase of the property  
 11 with all the requirements that were needed to get  
 12 clean title and then the title insurance commitment  
 13 on the sale would be issued in a clean form?

14 A. Yes.

15 Q. Is that -- I got that correct? Okay.  
 16 If the -- the lender would get a copy of the  
 17 commitment, correct, as part of the mortgage  
 18 application packet?

19 MR. KOTT: Excuse me. When you refer to  
 20 the lender, are you referring to National Home or  
 21 Walsh or both or just generically?

22 MR. MAGNANINI: Just generically.

23 A. Yes. Not as part of the application.  
 24 It would be after.

25 Q. Afterwards. Right. It was something

4 (Pages 150 to 153)

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<p style="text-align: right;">Page 154</p> <p>1 I've seen in all the loan packets from Walsh 2 Securities. How would the lender know if there were 3 any problems with the underlying title because the 4 lender never got the first -- actually I should ask 5 that foundational question. 6 Did the lender receive a copy of the 7 first title commitment for the purchase of the 8 property by Mr. Kane or his companies? 9 A. I don't know. 10 Q. Okay. So if they -- if the lender 11 didn't receive the first title commitment how would 12 they know if there were any problems with the title 13 because the commitment they received, the one with 14 the (A) on it showed the title was more or less 15 clean? 16 A. They wouldn't I guess. 17 Q. And Mr. Pepsny said I guess his firm did 18 the work to clean up the title on the original 19 commitment and then -- and, therefore, at least a 20 corollary, but Mr. Pepsny wouldn't have known this, 21 my question to you is: What title cleanup work did 22 the closing attorney have to do? And the closing 23 attorney on the ultimate sale being Mr. Yacker or Mr. 24 Cicalese. 25 A. I guess they would be doing the -- you</p>	<p style="text-align: right;">Page 156</p> <p>1 (Coastal-8, Letter dated January 14, 2 1997, is received and marked for identification.) 3 (Coastal-9, Letter dated April 9, 1997, 4 is received and marked for identification.) 5 (Coastal-10, Letter dated January 28, 6 1997, is received and marked for identification.) 7 (Coastal-11, Copy of Check, is received 8 and marked for identification.) 9 (Coastal-12, Deed, is received and 10 marked for identification.) 11 (Coastal-13, Letter dated 7/15/97, is 12 received and marked for identification.) 13 Q. Mr. Agel, what I've done is introduced 14 exhibits, Coastal Title Exhibits 7 through 13. The 15 first one I have got listed as Exhibit 7 is a 16 document produced by Coastal Title Bates stamped CTB 17 2784, which is an invoice to Stanley Yacker dated 18 12/9/1996 from Coastal Title for title insurance, 19 closing service letter and various searches on a 20 property known as 515 7th Avenue in Asbury Park, New 21 Jersey. And then what we've marked as Coastal 22 Exhibit 8 is Bates stamped CTB 2779, which is a 23 letter from Coastal Title Agency dated January 14, 24 1997 to Mr. Pepsny regarding 515 7th Avenue. And 25 then what we have marked as Coastal Exhibit 9 is</p>
<p style="text-align: right;">Page 155</p> <p>1 know, paying off any taxes, handling essentially the 2 mortgage closing I guess. 3 Q. Okay. But all of the underlying -- the 4 work, as Mr. Pepsny said, that was related to the tax 5 sales, the way Mr. Kane acquired the property, 6 foreclosures, all of that, that work was all done by 7 Mr. Pepsny? 8 A. Correct. 9 Q. That would explain why we have seen a 10 number of letters directed from Coastal Title to Mr. 11 Pepsny asking questions about, you know, requirements 12 that have not been cleaned up on the title 13 commitments. 14 A. Correct. 15 Q. Do you recall sending -- did Coastal 16 send letters to Mr. Yacker or Mr. Cicalese to clean 17 up requirements? 18 A. I don't know. I don't recall. 19 Q. Okay. 20 MR. MAGNANINI: Off the record for a 21 second. 22 (A discussion takes place off the 23 record). 24 (Coastal-7, Invoice dated 12/9/1996, is 25 received and marked for identification.)</p>	<p style="text-align: right;">Page 157</p> <p>1 another letter from Coastal Title Agency dated April 2 9, 1997 to Mr. Pepsny, again regarding 515 7th Avenue 3 in Asbury Park, and then what you've got marked as 4 Exhibit 10 is a January 28, 1997 letter from Coastal 5 Title Agency Bates stamped CTB 2778 from yourself to 6 Mr. Pepsny, again regarding the same property. And 7 then what you've got as Exhibit 11 is a check from 8 Mr. Yacker's trust account to -- as you see, made out 9 January 31, 1997 payable to Coastal Title in the 10 amount of \$1,206 and no cents. And that's from again 11 Coastal's files, Bates stamped CTB 2892. And then 12 what you've got as Exhibit 11 is -- Exhibit 12 is a 13 deed of sale between Arnold Faulhaber, Junior and 14 Claudia Faulhaber to G.J.L. Limited transferring 15 interest in 515 7th Avenue in Asbury Park for \$77,500 16 dated June 3, 1997 from Coastal's files Bates stamped 17 CTB 28372838. And then Exhibit 13 is another letter 18 from Coastal Title Agency dated July 15, 1997 to Mr. 19 Yacker from Sally Zappola regarding 515 7th Avenue. 20 And then if we can go off the record for a second. 21 (A discussion takes place off the 22 record). 23 (Coastal-14, Letter dated May 29, 1997, 24 is received and marked for identification.) 25 Q. Mr. Agel, I would like to show what's</p>

5 (Pages 154 to 157)

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Page 158

1 been marked as Coastal Exhibit 14, which is another  
2 letter from Coastal Title Agency to Mr. Pepsny  
3 regarding 515 7th Avenue from Christine LaFrance  
4 dated May 29, 1997 and ask you to take a look at that  
5 group of documents.

6 Other than these documents, Mr. Agel, do  
7 you have any independent recollection of the  
8 transaction regarding 515 7th Avenue in Asbury Park?

9 A. No.

10 Q. And then -- but if you take a look at  
11 Exhibit 7, that's an invoice issued by Coastal Title  
12 Agency in the normal course of business?

13 A. Correct, yes.

14 Q. Anything look out of the ordinary?

15 A. No.

16 Q. Okay. So this was a request -- the  
17 invoice is based on a request I assume from Mr.  
18 Yacker for title insurance and searches for 515 7th  
19 Avenue?

20 A. Presumably.

21 Q. And then the title number, CT 18904 with  
22 that (A) in parenthesis and so this was -- do you  
23 know if a title commitment was issued on the purchase  
24 of 515 7th Avenue?

25 A. On the (A) file. (A) part of it or on

Page 159

1 the original part of it?

2 Q. On the original part of it.

3 A. I can only assume yes without looking at  
4 a file.

5 Q. That's why the (A) is there?

6 A. Right.

7 Q. Okay. And then if you turn to Exhibit  
8 8, which is the January 14, 1997 letter, I would ask  
9 if you have seen this document before?

10 A. Not before today.

11 Q. You don't recall?

12 A. I don't recall before today.

13 Q. And then it appears to be a letter from  
14 yourself to Mr. Pepsny. What was the purpose of this  
15 letter?

16 A. They might have asked for that  
17 recognizance to be removed from the title insurance  
18 commitment and this was the answer saying no  
19 essentially.

20 Q. And then do you recall if Mr. Pepsny  
21 responded to this letter --

22 A. No, I don't recall that.

23 Q. -- at this time?

24 A. No.

25 Q. Okay. If you can go to Exhibit 10 then,

Page 160

1 which is the -- I'm sorry, Exhibit 9. Actually if  
2 you could turn to Exhibit 11. They're slightly out  
3 of order. That's the check from Mr. Yacker's trust  
4 account to Coastal Title for the \$1,206 payable on  
5 the invoice.

6 A. Yes.

7 Q. Number seven. And again it came from  
8 your files. What would happen had you received a  
9 payment from Mr. Yacker on one of these properties?

10 A. As I said last time we would put it in  
11 the system for a cover record and, you know, probably  
12 this date, January 31st, cover record requests  
13 ultimately would have gone to the searcher probably  
14 sometime towards mid March because we had the  
15 recording backlog we talked about last time.

16 Q. Right.

17 A. And so we would have probably put that  
18 in for cover record around mid March, probably got it  
19 back sometime -- back then I bet it was probably  
20 beginning to middle of April.

21 Q. Okay.

22 A. And then from there we would have  
23 started -- if everything had been done properly, we  
24 would have started the process of issuing a policy.

25 Q. Okay. What happened with the actual

Page 161

1 proceeds of the check because you've invoiced Mr.  
2 Yacker for I assume work -- some work you have  
3 already done, some expenses you have already  
4 incurred --

5 A. Right.

6 Q. -- with searches, but some of it is for  
7 work I guess to be done in the future.

8 A. Not really. No, that's not the way it  
9 works. The payment is for -- we do work after the  
10 file is paid but it's -- that's all part of the filed  
11 rates with the State of New Jersey. You're charged I  
12 think in this case 90 or \$100, \$105 for the basic  
13 examination. That covers everything that we do in  
14 terms of the search, examination of the title, all  
15 those letters, the cover record, production of the  
16 policy.

17 Q. Okay. So once you received the check  
18 you would just deposit it and then --

19 A. Right.

20 Q. -- pay yourself and then some amount  
21 would go into your trust account. Is that correct?

22 A. Premium trust account. Premium trust  
23 for the underwriters.

24 Q. To pay the title insurance companies  
25 themselves?

6 (Pages 158 to 161)

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<p style="text-align: right;">Page 162</p> <p>1 A. Correct.</p> <p>2 Q. I think on -- what ends up happening on</p> <p>3 this one is that no title policy, or at least we</p> <p>4 can't find a title insurance policy. What happened</p> <p>5 if you -- if Coastal Title -- or I'm not sure -- if</p> <p>6 Coastal Title did not issue a title insurance policy</p> <p>7 on behalf of one of the title companies, what happens</p> <p>8 to the money you were -- Coastal Title was paid?</p> <p>9 A. We still -- when we're paid we assign a</p> <p>10 policy number to the file and it still gets paid over</p> <p>11 to the underwriter.</p> <p>12 Q. So what happens if for whatever reason</p> <p>13 the policy is never issued? Does the underwriter,</p> <p>14 and by the underwriter I keep saying, the title</p> <p>15 insurance company --</p> <p>16 A. Same thing.</p> <p>17 Q. Do they return the money to you to be</p> <p>18 returned to the purchaser?</p> <p>19 A. No, because my understanding is they've</p> <p>20 got the liability. They certainly have the liability</p> <p>21 to the lender for the mortgage policy. We would --</p> <p>22 in many cases -- not in many cases, in most cases, if</p> <p>23 not all, we're bound to issue the mortgage policy</p> <p>24 even if the attorney didn't do his job and clean up</p> <p>25 the title.</p>	<p style="text-align: right;">Page 164</p> <p>1 search-wise -- I will say title commitment-wise in a</p> <p>2 case like this? I assume Mr. Pepsny's put in a</p> <p>3 request for a title commitment on the purchase and</p> <p>4 then the sale has got a title commitment number CT</p> <p>5 18904(A). I am assuming CT 18904 was the title</p> <p>6 commitment request on the purchase by Kane, but the</p> <p>7 purchase itself doesn't conclude until June 3rd of</p> <p>8 '97. So these guys are closing the sale in January</p> <p>9 31st of '97 but they're not buying the property until</p> <p>10 June 3rd of '97. What would happen when you ran the</p> <p>11 searches on this kind of property?</p> <p>12 A. Well, we wouldn't pick up -- we wouldn't</p> <p>13 pick up the deed.</p> <p>14 Q. The deed --</p> <p>15 A. What you do is you run Faulhaber.</p> <p>16 Q. The owner of the property at that time?</p> <p>17 A. Correct. Yes, you would run him out</p> <p>18 looking for the deed out of Faulhaber. Not seeing</p> <p>19 the deed on record, you don't go any further. I</p> <p>20 think you're going to see here a letter at some</p> <p>21 point -- letter dated in July that we found the deed</p> <p>22 into G.J.L. but no deed out of G.J.L.</p> <p>23 Q. That's a letter we've got listed as</p> <p>24 Exhibit 13.</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. Okay. So the lender is still insured,</p> <p>2 it's the actual individual purchaser who doesn't get</p> <p>3 a policy?</p> <p>4 A. Correct.</p> <p>5 Q. And is the lender insured through the</p> <p>6 closing service letter that's issued as well as the</p> <p>7 policy or through both?</p> <p>8 A. Well, through both. One covers the</p> <p>9 actions of the attorney or whoever the closing</p> <p>10 service letter is issued on. Could be a title</p> <p>11 company. One -- that covers the attorney's actions,</p> <p>12 whether he runs away with the money, doesn't do all</p> <p>13 of the cleaning up of the title objections. And the</p> <p>14 other is the policies -- is for if you don't have a</p> <p>15 first lien essentially. Say those judgments were</p> <p>16 still open and there was a lien.</p> <p>17 Q. In a case like this, the -- I will say</p> <p>18 one of the more egregious examples because I think</p> <p>19 the closing occurs January 31st of '97, but I think</p> <p>20 when we get back to the deed, which is Exhibit 13, if</p> <p>21 you take a look at Exhibit 13, G.J.L., Mr. Kane's</p> <p>22 d/b/a for Cristo Property Management Company, didn't</p> <p>23 actually acquire the property until June 3 of '97.</p> <p>24 So he actually buys this property five months after</p> <p>25 he's sold it. What would happen I guess</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Okay. So the invoice is actually dated</p> <p>2 to Mr. Yacker December 9 of '96.</p> <p>3 A. Right.</p> <p>4 Q. So they must have put in a request</p> <p>5 obviously before the closing for the title work?</p> <p>6 A. Yeah, sometime prior to December 9th</p> <p>7 they would put in the request, yes.</p> <p>8 Q. So you invoiced them, and then you would</p> <p>9 have told them that they had no -- or you had not</p> <p>10 found a deed from Faulhaber, the owners of the</p> <p>11 property, to J.G.L. or G.J.L., I keep screwing that</p> <p>12 up?</p> <p>13 A. Yeah, probably, yes.</p> <p>14 Q. And then what else? Was there anything</p> <p>15 else that would have been different from a usual</p> <p>16 title commitment record search if, in fact, somebody</p> <p>17 is selling a property months before they actually</p> <p>18 have possession of it?</p> <p>19 A. I'm not sure I understand.</p> <p>20 Q. When you ran the searches -- I guess I</p> <p>21 want to say a normal, but in a closing in which the</p> <p>22 buyer owns the property --</p> <p>23 MR. McGOWAN: Sort of like it's supposed</p> <p>24 to be.</p> <p>25 Q. A normal course of things, the way at</p>

7 (Pages 162 to 165)

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Page 166

1 least I bought houses, is there anything different  
 2 that would come up in the searches because G.J.L. did  
 3 not own the property until June when you ran searches  
 4 in, I assume, December or January of '97?  
 5 A. No, but that was no different than all  
 6 of the previous ones that we had done. Remember we  
 7 did the search for Pepsny.  
 8 Q. Right.  
 9 A. We did the commitment for Pepsny saying  
 10 this is what needs to be cleared up. We would then  
 11 get that second order in for the ultimate -- well,  
 12 straw buyer and we would do the commitment, the clean  
 13 commitment, so to speak.  
 14 Q. The second one?  
 15 A. Yes.  
 16 Q. With the (A).  
 17 A. Always with the understanding that they  
 18 were closing and buying these things before they sold  
 19 them. We didn't find out about them doing this  
 20 selling before they bought until probably around this  
 21 time, late in the first quarter of '97 probably.  
 22 Q. Okay.  
 23 A. Maybe even after that possibly.  
 24 Q. And so this letter that's Exhibit 13 is  
 25 actually July 15?

Page 167

1 A. Right.  
 2 Q. Do you recall having any discussions  
 3 with Mr. Yacker or Mr. Pepsny once you found out that  
 4 the property had been sold in January but not  
 5 purchased until June?  
 6 A. I don't know if it was specifically on  
 7 this file, but we did find that they were closing on  
 8 some properties, the sale to the straw buyer,  
 9 after -- or before they purchased the property and,  
 10 yes, I spoke to -- I am certain we called Yacker, and  
 11 it would have been me, and I got the usual: Call  
 12 Pepsny or Kane. And I spoke -- vividly remember  
 13 speaking with Pepsny about it and saying: This can't  
 14 happen, we can't do this. We can't insure.  
 15 Q. What was Mr. Pepsny's response?  
 16 A. I won't -- we won't let them do that.  
 17 So he gave me an assurance that it would never happen  
 18 again but apparently and obviously it did.  
 19 Q. Do you recall if Mr. Pepsny ever told  
 20 you that he thought the dates on deeds that he  
 21 prepared were being changed by other people, either  
 22 Yacker's office or Kane?  
 23 A. I don't recall that.  
 24 Q. As we deposed him yesterday we found a  
 25 number of deeds which again were sold either in June

Page 168

1 but the buy doesn't occur until September, and he  
 2 disclaimed any knowledge of that and -- until after  
 3 the -- these frauds became public. But you recall  
 4 talking to him about it before that time?  
 5 A. Yes.  
 6 Q. And his saying that it wouldn't happen  
 7 again?  
 8 A. Yes.  
 9 Q. And then I guess if we can just go back  
 10 to these exhibits, Mr. Agel, Exhibit 9 is a letter  
 11 from Sheri Federer of Coastal Title to Richard Pepsny  
 12 dated April 9, 1997. Who was Sherry Federer?  
 13 A. She was a typist in the office.  
 14 Q. And would she have sent this letter out  
 15 at your direction or someone else's?  
 16 A. No, no, she would have done this on her  
 17 own.  
 18 Q. Because she had seen that this -- well,  
 19 what does this letter say?  
 20 A. We're attempting to clear up old files  
 21 and we can't issue the policy in this case because  
 22 there was an open mortgage.  
 23 Q. And then if you take a look at what's  
 24 been marked as Coastal Exhibit 10, the letter dated  
 25 January 28, 1997, that's actually from you?

Page 169

1 A. Yes.  
 2 Q. And again this came from Coastal's  
 3 production and it was not signed. Was that because  
 4 this was a file copy?  
 5 A. Correct.  
 6 Q. And what does this letter say?  
 7 A. Well, he must have given us proofs on a  
 8 bankruptcy and so we, therefore, omitted to -- any  
 9 questions we had raised regarding the bankruptcy of  
 10 that seller and then we are telling him that there  
 11 are three items that need to be disposed of, open  
 12 mortgages and a tax sale certificate, the open  
 13 recognizance and then judgments that are actually  
 14 against the seller.  
 15 Q. And those are the items that are  
 16 referred to in the other Coastal letters in the  
 17 exhibits?  
 18 A. Yes.  
 19 Q. Okay. And the last one, just to clear  
 20 up, is Exhibit 14, which is the May 29, 1997 letter  
 21 from Christine LaFrance. Who was Miss LaFrance?  
 22 A. She was a title officer at our company.  
 23 Q. Is she still there?  
 24 A. No.  
 25 Q. And then -- this is dated May 29, 1997,

8 (Pages 166 to 169)

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<p style="text-align: right;">Page 170</p> <p>1 which is actually I guess about four months after the</p> <p>2 closing but the week before Mr. Kane's company</p> <p>3 acquires title to the property. Why is she asking</p> <p>4 for the escrow at this point in time?</p> <p>5 A. Because I presume that he called up</p> <p>6 saying: We want to close on the sale of this</p> <p>7 property or the purchase of the property, can you</p> <p>8 tell me what I need to do in order to get insurable</p> <p>9 title?</p> <p>10 Q. And so what Miss LaFrance is saying is</p> <p>11 because there's liens and judgments, Coastal Title</p> <p>12 requires the escrow be held. Who would actually hold</p> <p>13 the escrow?</p> <p>14 A. Probably Pepsny.</p> <p>15 Q. Did Coastal hold escrow for -- back in</p> <p>16 '96, '97 for issues like this that needed to be</p> <p>17 cleared up?</p> <p>18 A. Yes, we did.</p> <p>19 Q. Did you ever hold any escrow accounts</p> <p>20 for any of the Kane purchases or sales?</p> <p>21 A. No, I don't think so.</p> <p>22 Q. Now, did this raise any red flags with</p> <p>23 Coastal since I guess it -- that's what I presume</p> <p>24 too, that Pepsny wanted to close on the purchase but</p> <p>25 you had already got an application, had done</p>	<p style="text-align: right;">Page 172</p> <p>1 way that you can determine from the files you have</p> <p>2 whether or not the deed or mortgage were ever</p> <p>3 recorded?</p> <p>4 A. No, not -- not at all. Those -- after</p> <p>5 this broke those original documents that were not</p> <p>6 recorded ended up with the FBI.</p> <p>7 Q. So any of the originals that Coastal</p> <p>8 had, I guess there's no way they could be recorded?</p> <p>9 A. Not without -- well, no, we were</p> <p>10 finished. At that point we were finished, and when</p> <p>11 the files were turned over to the FBI everything came</p> <p>12 to a screeching halt.</p> <p>13 Q. So this then is a property on which</p> <p>14 Walsh Securities loaned money and gave a mortgage,</p> <p>15 the mortgage was executed, the property was sold, the</p> <p>16 property was then purchased, the deed was finally</p> <p>17 recorded showing G.J.L. having ownership of the</p> <p>18 property but the deed to the seller and the mortgage</p> <p>19 of Walsh Securities were never recorded. So what is</p> <p>20 Walsh Securities' recourse with this? This is why</p> <p>21 you have the closing protection letter and the title</p> <p>22 insurance I guess.</p> <p>23 A. Yes. I guess that's why we have this</p> <p>24 lawsuit going too.</p> <p>25 Q. Right. Do you know how many original</p>
<p style="text-align: right;">Page 171</p> <p>1 searches, were trying to get mortgages for the sale</p> <p>2 of the property?</p> <p>3 A. Right. I can tell what I think</p> <p>4 happened -- and I'm pretty sure this would be the</p> <p>5 case -- is I am certain we had two files. We would</p> <p>6 have an actual physical file, 18904, and we would</p> <p>7 have a separate physical file for 18904(A). Probably</p> <p>8 in January when that file, 18904, was paid, that went</p> <p>9 into the system for the cover record, etcetera, and</p> <p>10 the two files were separated.</p> <p>11 So when Christine was working on this</p> <p>12 she probably didn't know -- in fact, I am certain she</p> <p>13 wouldn't know that the other file had closed.</p> <p>14 Q. Right. That the property had already</p> <p>15 been sold?</p> <p>16 A. Right.</p> <p>17 Q. And she was still working on the</p> <p>18 purchase?</p> <p>19 A. She would have no idea because she</p> <p>20 continued the searches and you don't see deeds.</p> <p>21 Q. Okay. And then in this case at least</p> <p>22 what we can find from searching the deed from G.J.L.</p> <p>23 to the purchaser, which I want to -- is I guess</p> <p>24 Viscardo, and the mortgage of Walsh Securities were</p> <p>25 never recorded as far as we can tell. Is there any</p>	<p style="text-align: right;">Page 173</p> <p>1 documents or original files you turned over to the</p> <p>2 FBI --</p> <p>3 A. I don't recall.</p> <p>4 Q. -- back in '97? So I guess as far as</p> <p>5 you would know any of the originals in those files</p> <p>6 were never recorded, the deeds and mortgages?</p> <p>7 A. Probably not recorded. I don't know. I</p> <p>8 never searched it after that.</p> <p>9 Q. Okay. And that probably explains why we</p> <p>10 have been -- as we have been searching we haven't</p> <p>11 found in a number of cases any recorded mortgages or</p> <p>12 deeds --</p> <p>13 A. Right.</p> <p>14 Q. -- for these properties. Right. Okay.</p> <p>15 If -- Mr. Pepsny would order a title commitment on</p> <p>16 the original purchase and Coastal would get paid at</p> <p>17 that closing. Correct?</p> <p>18 A. In the beginning I'm pretty sure that</p> <p>19 was the case. I think one of the reasons -- I don't</p> <p>20 think that Kane and his companies bought title</p> <p>21 insurance on their purchase after a while. They were</p> <p>22 trying to save some money I guess. So, no, I don't</p> <p>23 think they purchased title insurance on the original</p> <p>24 file. I don't think they did.</p> <p>25 Q. I guess what I'm trying to figure out</p>

9 (Pages 170 to 173)

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Page 174

1 is: It almost seems to me that Coastal was doing --  
 2 if you were doing a search for the purchase and a  
 3 search for the sale there were kind of overlaps, even  
 4 though you are getting paid for two distinct  
 5 transactions. And then if you were only getting paid  
 6 on the sale you would actually -- seems to me Coastal  
 7 was doing more work by having to run the searches on  
 8 the original purchase as well as on the sale. So it  
 9 seemed to me like -- I wasn't sure it made economic  
 10 sense.

11 A. Well, what you would do on the second  
 12 file is -- all you do is update from the original  
 13 work, the original commitment, so you're just  
 14 updating. So the costs are much less and, yeah,  
 15 it -- these were very -- these were not big money  
 16 makers for us.

17 Q. I think when we look back at the files,  
 18 the (A) in parenthesis came into use, at least as far  
 19 as we can tell, in June of 1996. Do you have any  
 20 idea why it started then because we've seen  
 21 transactions involving Mr. Kane's companies going  
 22 back to 1995 and the ones involving Walsh Securities  
 23 actually didn't come into existence until April of  
 24 '96, so they actually were involved with Walsh's  
 25 predecessor, a company called GF or Gruntal

Page 175

1 Financial.

2 Do you know why June of '96 was the  
 3 beginning of the use of the (As) on the title  
 4 numbers?

5 A. I don't know why it was that specific  
 6 date. It all related back to the duplication of work  
 7 me where Pepsny was doing the work, Yacker said he  
 8 was doing some work and then Walsh Securities or GF  
 9 couldn't understand what was going on.

10 Q. Did you ever speak to anybody at Walsh  
 11 or GF about whether they were having -- they were  
 12 confused about what was going on, or was that just  
 13 information relayed to you by Mr. Kane?

14 A. It was relayed to us either by Kane or  
 15 Pepsny or both.

16 Q. Okay. We haven't gotten documents from  
 17 Commonwealth yet or not all of them but we've only  
 18 found so far 17 title insurance policies issued by  
 19 Commonwealth or I guess issued by Coastal Title on  
 20 behalf of Commonwealth. And I was trying to sort  
 21 that out in the time frame of things.

22 Mr. Kane, as I said, or his companies  
 23 started buying and selling these properties probably  
 24 in 1995 at least. For this lawsuit I am interested  
 25 in 1996 or June of '97 and so transactions were

Page 176

1 occurring and on -- in some months there were  
 2 significant numbers of transactions based on -- I  
 3 know you had estimated last time that you closed --  
 4 did about 200 closings a month and we went back and  
 5 looked. And I think in April of 1997 Mr. Kane's  
 6 companies sold about 20 properties and I guess about  
 7 28 in May -- sorry, it's 1996, not 1997. So April of  
 8 1996 they sold 20 properties and May was about 28.  
 9 So based on your number of 200, that was about ten  
 10 percent of or 14 percent of what you were closing  
 11 that month.

12 A. When I said 200, number one, that's an  
 13 average for the year.

14 Q. Okay.

15 A. Your volumes change dramatically from  
 16 month to month. Winter months we might have done a  
 17 hundred orders. Spring months when business always  
 18 picks up we might have done 400. So I gave you an  
 19 average is what that was.

20 Q. And --

21 A. Plus there were also other search files,  
 22 like we don't do just title insurance, we do title  
 23 searching. So that could have been another 50 or 75  
 24 files each month too.

25 Q. So the number of Kane transactions

Page 177

1 initially -- like I said when I looked at that, I  
 2 said this is kind of substantial at least for those  
 3 months, 20 or 28 closings, but those closings  
 4 occurred in 1996, and as I said we've seen  
 5 transactions back I think into February or maybe  
 6 January of '96 forward, but I've been trying to  
 7 determine why there's only 17 title insurance  
 8 policies issued by Commonwealth, and of the 17, eight  
 9 of them actually are issued after April of 1997,  
 10 after you had to file all these deeds and whatnot.

11 A. Uh-huh.

12 Q. Do you have any explanation why?

13 A. Why only 17?

14 Q. It might be -- do you have any  
 15 recollection why the policies weren't being issued or  
 16 they were issued and we just don't have copies of  
 17 them?

18 A. We stopped issuing policies after a  
 19 while because we were told to by Commonwealth and by  
 20 Fidelity, just stop doing everything, we're not doing  
 21 anything on these files anymore.

22 Q. And when was that, Mr. Agel?

23 A. I can't give you an exact date. It was  
 24 after everything -- after all hell broke loose, so to  
 25 speak. After we realized that this was a problem.

10 (Pages 174 to 177)

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<p style="text-align: right;">Page 178</p> <p>1 Q. And was that before it was public 2 knowledge or after that time? 3 A. Probably right around the same time. 4 Q. Okay. So you received directives not to 5 issue any more title insurance policies -- 6 A. Right. 7 Q. -- in the June, July '97 time frame? 8 A. Probably around then. Maybe sooner but 9 I don't think it was a lot sooner. 10 Q. Do you have any explanation then why 11 policies would not have been issued from February '96 12 forward or they were and we just don't have copies of 13 them? 14 A. I'm thinking you didn't get copies. 15 Q. But there's nothing systemic you recall 16 that you were told by either Commonwealth or 17 Fidelity: We're not going to issue title insurance 18 policies in 1996 or the beginning of 1997? 19 A. No, no. 20 Q. Okay. You said just before that you 21 told Mr. Pepsny at one point that there's something 22 wrong here so we're not going to issue any more 23 policies. Do you recall when that conversation was? 24 A. No. 25 Q. Do you recall having any conversation</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Kelly O'Neill? 2 A. No. 3 Q. You said you may have met Mr. D'Apolito 4 at some point? 5 A. Possibly. 6 Q. Okay. I guess the other two people 7 whose names have come up from Walsh Securities was a 8 fellow named Paul Del Rosso -- 9 A. No. 10 Q. -- who was a head underwriter. Or Peter 11 Trebour? 12 A. No. 13 Q. Quality control. One of the things we 14 discussed earlier, Mr. Agel, was Coastal's 15 involvement when claims came in from Walsh Securities 16 on these policies. And you testified, I believe in a 17 nutshell, that you had turned over your files to the 18 title companies. 19 A. Correct. 20 Q. And then I guess -- I think I had asked 21 you whether you were ever interviewed by the title 22 companies as part of their -- or do you know if the 23 title companies conducted an investigation of the 24 claims? 25 A. I don't know. I assume so.</p>
<p style="text-align: right;">Page 179</p> <p>1 with anyone at Walsh Securities about what you told 2 Mr. Pepsny? 3 A. Never. 4 Q. Was there any reason why not? 5 A. I never had contact with anyone at Walsh 6 Securities. We weren't the closing agent so we 7 wouldn't deal with the lender. 8 Q. Okay. Do you recall if anyone from 9 Walsh Securities ever contacted you as the title 10 agent? 11 A. No. 12 Q. Did you ever speak to anyone named Fred 13 Schlessinger? 14 A. I know who he is, but, no, I don't think 15 so. 16 Q. How about Art Garber? 17 A. No. 18 Q. Or Arnold Cohen? 19 A. No. 20 Q. Have you ever spoken to Bob Walsh? 21 A. No. 22 Q. How about Jim Walsh? 23 A. No. 24 Q. Betty Ann DeMola? 25 A. No.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Were you ever interviewed by any of the 2 underwriters or in-house attorneys or outside counsel 3 for the title companies? 4 A. I don't think so, no. 5 Q. Did you do any -- Coastal Title do any 6 sort of investigation on your own? 7 A. No, not after -- no. 8 Q. So you didn't interview anybody or take 9 notes or -- 10 A. No. 11 Q. -- any of that stuff. Okay. What is 12 Coastal's protocol for investigating a claim when it 13 comes in? 14 A. What we do is turn the file over to the 15 underwriter immediately. It's contractual between 16 us. And I turn it over and we don't know half the 17 time what happens in a claim. 18 Q. Is it usual for you to be -- or to 19 answer questions from the title companies or the 20 underwriters in a claim? 21 A. It happens, yes. 22 Q. And how is that done? Telephonically? 23 A. Yes. 24 Q. What happens if the -- if there's a 25 lawsuit, if the insured sues either Coastal or the</p>

11 (Pages 178 to 181)

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Page 182

1 title company? Does the claim investigation continue  
 2 or does it stop at that point?  
 3 A. You're the first one for me.  
 4 Q. Okay. Do you know what happened to --  
 5 well, you said Coastal did not conduct an  
 6 investigation. Do you know what happened to the  
 7 investigation at the title company level once the  
 8 lawsuit was filed?  
 9 A. No.  
 10 Q. So you never discussed that with them?  
 11 A. No.  
 12 Q. What about there was the lawsuit we  
 13 discussed between NHF and Coastal and Commonwealth?  
 14 Did Coastal conduct any sort of internal  
 15 investigation as a result of that lawsuit or those  
 16 claims?  
 17 A. No.  
 18 Q. Do you know if Commonwealth undertook an  
 19 investigation?  
 20 A. No, I don't.  
 21 Q. So you were not contacted by  
 22 Commonwealth to provide information about the NHF  
 23 lawsuit?  
 24 A. No.  
 25 Q. And you said that that case was settled

Page 183

1 by a payment from your carrier and some by  
 2 Commonwealth. Do you know if Commonwealth paid any  
 3 portion of its share on -- of the money Commonwealth  
 4 paid on Coastal's behalf --  
 5 A. I don't think so.  
 6 Q. -- in the NHF suit? Did Commonwealth  
 7 pay Coastal any money as a result of the Walsh  
 8 lawsuit?  
 9 A. No.  
 10 Q. How about any of the underlying  
 11 properties? Was any money refunded from Commonwealth  
 12 to Coastal Title?  
 13 A. No.  
 14 Q. During our last deposition you said you  
 15 had spoken to the underwriters for Commonwealth and  
 16 Fidelity on a regular basis regarding the Kane  
 17 transactions, and you said the underwriter, the  
 18 in-house counsel I am more used to calling her, is  
 19 Miss Koch from Commonwealth or was Miss Koch. Did  
 20 you ever meet her in person?  
 21 A. Yes. Not about these files but I've met  
 22 her many times.  
 23 Q. Okay. And then that was going to be my  
 24 next --  
 25 A. Sorry.

Page 184

1 Q. That's okay. When was the last time you  
 2 spoke to Miss Koch?  
 3 A. I couldn't tell you; it's a long time.  
 4 Q. Do you recall when she left  
 5 Commonwealth?  
 6 A. I think it's in the last few years.  
 7 Q. Coastal had ceased doing business with  
 8 Commonwealth?  
 9 A. Correct.  
 10 Q. I guess after this whole --  
 11 A. Correct.  
 12 Q. -- thing broke. Mr. Agel, previously we  
 13 were discussing Coastal Title being told by the title  
 14 companies not to issue these title insurance  
 15 policies. Do you recall discussing with Miss Koch or  
 16 anyone from Fidelity whether you should tell the  
 17 lender, Walsh Securities, what you uncovered with  
 18 these properties?  
 19 A. No.  
 20 Q. Do you recall them ever telling you not  
 21 to tell Walsh Securities what had happened?  
 22 A. No.  
 23 Q. Did you have a fiduciary duty to inform  
 24 Walsh Securities who was the insured of what was  
 25 going on?

Page 185

1 MR. KOTT: I object to the form of the  
 2 question.  
 3 MR. McGOVERN: I object to the form of  
 4 that also. Legal conclusion but you can answer it.  
 5 Q. I am asking for your understanding.  
 6 A. No.  
 7 Q. We had talked prior about the cover  
 8 searches. And when we went back and looked at the  
 9 deeds recorded by Coastal Title in April of 1997 some  
 10 of them stretched back as far as closings from June  
 11 of 1996. Do you know why it took so long to uncover  
 12 this pattern that Mr. Yacker had not been filing the  
 13 deeds or mortgages as required?  
 14 MR. McGOWAN: Number one, I think that  
 15 was asked and answered last time, but you can go  
 16 ahead and answer if you can. I don't know how he  
 17 knows what Yacker was doing.  
 18 A. I don't know.  
 19 Q. My question to you is: Since you  
 20 were -- since Coastal Title was doing the bring down  
 21 searches, why did it take so long for Coastal to  
 22 determine that deeds and mortgages weren't being  
 23 filed?  
 24 A. I don't know. I don't recall. I can  
 25 tell you that we -- once we found out we contacted

12 (Pages 182 to 185)

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Page 186

1 them. I don't think -- I don't recall it happening  
 2 in 1996. I only recall it happening late '96, early  
 3 '97.  
 4 Q. I'm saying June -- based on what was  
 5 filed by Coastal Title and recorded it was your --  
 6 like I said it was about 150 deeds and mortgages  
 7 recorded April 8th and 9th in Monmouth County.  
 8 A. I thought that was in '97.  
 9 Q. In '97 it was, but some of the deeds and  
 10 mortgages that were being recorded were from closings  
 11 in June of '96.  
 12 A. That's possible.  
 13 Q. And -- but I was just trying to figure  
 14 out why there was a ten-month lag between closings  
 15 and deeds not being filed and then --  
 16 A. You would be shocked at how many  
 17 attorneys don't record deeds on time.  
 18 Q. But in numbers like this?  
 19 A. This was a very small percentage of our  
 20 business so I didn't pay that much attention.  
 21 Q. Okay.  
 22 (A recess takes place.)  
 23 Q. Mr. Agel, continuing on. Last time we  
 24 discussed, Mr. Agel, Mr. Kane had given you a check  
 25 for 50 to 60,000 to cover the recording fees and

Page 187

1 taxes and various things like that. We actually came  
 2 upon --  
 3 (Coastal-15, Copy of Check, is received  
 4 and marked for identification.)  
 5 Q. Mr. Agel, speaking of trust accounts, I  
 6 show you what we've marked as Exhibit 15, which is a  
 7 check, and as I said this came up in our discussions  
 8 last time about the payment of what you thought was  
 9 between 50 and \$60,000. And if you look at the  
 10 actual check here it's a payment of 50,000 to Coastal  
 11 Title Agency and I think that says "escrow  
 12 account" --  
 13 A. Uh-huh, yes, it does.  
 14 Q. -- on the check. Did Coastal Title  
 15 Agency have an escrow account?  
 16 A. Yes.  
 17 Q. Is that your -- where Coastal Title  
 18 regularly received payments from attorneys?  
 19 A. No.  
 20 Q. And this is actually -- while it says  
 21 Cicalese 488 on the bottom it's actually a  
 22 treasurer's check from Summit Bank and it's dated  
 23 April 1 of 1997.  
 24 Does this refresh your recollection of  
 25 whether you received a check from Mr. Kane or

Page 188

1 possibly Mr. Cicalese on behalf of Mr. Kane?  
 2 A. It does now, yes.  
 3 Q. Do you think this was the check to pay  
 4 all the recording fees?  
 5 A. It had to be.  
 6 Q. Was there any other reason Coastal Title  
 7 would have received a treasurer's check from an  
 8 attorney for, I'll say, a regular closing, a regular  
 9 residential closing?  
 10 A. Not unless we were holding an escrow.  
 11 Q. And you earlier testified that the  
 12 escrows were held by the lawyers on the Kane Company  
 13 transactions.  
 14 A. Correct.  
 15 Q. Okay. Sorry about jumping around.  
 16 Going back to the documents that you gave to the FBI,  
 17 was there -- why did Coastal Title turn over the  
 18 original documents as opposed to a copy to the FBI?  
 19 A. I don't recall. I really don't recall.  
 20 Q. And you cannot record copies of the  
 21 deeds and mortgages?  
 22 A. No.  
 23 Q. Last time we spoke, Mr. Agel, you  
 24 testified that you thought officers of Walsh  
 25 Securities were involved in the fraud and you cited

Page 189

1 to the fact that Betty Ann DeMola, who you thought  
 2 was an officer based on newspaper accounts, had pled  
 3 guilty to something. Do you know what the charges  
 4 were against Miss DeMola?  
 5 A. No.  
 6 Q. Do you know what she actually pled  
 7 guilty to?  
 8 A. I don't recall.  
 9 Q. You also had testified that before these  
 10 frauds became public you were contacted by a reporter  
 11 at some point?  
 12 A. Yes.  
 13 Q. Do you recall whether -- the reporter  
 14 was from what paper?  
 15 A. The Asbury Park Press.  
 16 Q. Do you remember the name of the  
 17 reporter?  
 18 A. Yes, Nancy Shields.  
 19 Q. And then did you have any discussions  
 20 with Miss Shields?  
 21 A. Yes.  
 22 Q. And what did you discuss with her?  
 23 A. Just the -- we had recorded all of those  
 24 deeds and she wanted to -- you know, I guess  
 25 background information on it, and I don't recall

13 (Pages 186 to 189)

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Page 190	Page 192
<p>1 exactly what we discussed there or what I told her.</p> <p>2 It was so long ago.</p> <p>3 Q. Did you ever get a copy of her notes or</p> <p>4 a transcript of what you said or anything like that?</p> <p>5 A. No.</p> <p>6 Q. Do you recall if you were quoted in the</p> <p>7 paper?</p> <p>8 A. I think once.</p> <p>9 Q. When you spoke to Miss Shields were you</p> <p>10 still doing business with Mr. Kane and Mr. Pepsny and</p> <p>11 I guess at that point Cicalese?</p> <p>12 A. Probably.</p> <p>13 Q. Did you speak to Kane or Pepsny or</p> <p>14 Cicalese about being contacted by the reporter?</p> <p>15 A. You know, I remember talking to them but</p> <p>16 I don't remember whether it was after or before the</p> <p>17 story hit the paper. I just don't remember.</p> <p>18 Q. Do you remember the substance of the</p> <p>19 conversations?</p> <p>20 A. Well, at the time I thought they were</p> <p>21 still good guys and I told them that I'm sorry you</p> <p>22 have to deal with this and that kind of thing really.</p> <p>23 Q. Did they give you any assurances or tell</p> <p>24 you anything?</p> <p>25 A. Yes. They gave me assurance that they</p>	<p>1 A. Right.</p> <p>2 Q. When did you meet with them?</p> <p>3 A. Like I said, I think either late '96,</p> <p>4 early '97. I am not 100 percent certain. That was</p> <p>5 before the story broke in the paper. I'm almost</p> <p>6 positive.</p> <p>7 Q. Was it before you recorded all these</p> <p>8 deeds and mortgages?</p> <p>9 A. You know, I don't recall. I think it</p> <p>10 was after.</p> <p>11 Q. After that. Okay. What was the purpose</p> <p>12 of that meeting?</p> <p>13 A. They were interviewing me, gathering</p> <p>14 information on their investigation.</p> <p>15 Q. Did they tell you you were a subject or</p> <p>16 a target of the investigation?</p> <p>17 A. They told me I was not.</p> <p>18 Q. Okay. Off the record.</p> <p>19 (A discussion takes place off the</p> <p>20 record).</p> <p>21 Q. What did you discuss at the meeting with</p> <p>22 them?</p> <p>23 A. Oh, God, just -- it's -- kind of what</p> <p>24 we're doing here, the whole process. It can almost</p> <p>25 be a carbon copy of the last two times we met.</p>
Page 191	Page 193
<p>1 were on the up and up and they were the real deal and</p> <p>2 this was all fabrication on the press's part.</p> <p>3 Q. And then you also had said you had met</p> <p>4 with the FBI at some point.</p> <p>5 A. Yes. Yes.</p> <p>6 Q. And do you recall when that was?</p> <p>7 A. Sometime in early '97 I think it was. I</p> <p>8 don't know for sure.</p> <p>9 Q. In 1997 or 1998 time frame-wise --</p> <p>10 A. There were a couple of -- once was with</p> <p>11 the agent Tom Jobs, and the other time was with</p> <p>12 actually the U.S. Attorney Alan Leibman.</p> <p>13 Q. And so do you recall that being before</p> <p>14 the frauds became public or after?</p> <p>15 A. Jobs was before and Leibman was</p> <p>16 definitely after.</p> <p>17 Q. When did you meet with -- was it just</p> <p>18 Tom Jobs or someone else?</p> <p>19 A. No, Larry Willis, he was the county</p> <p>20 prosecutor.</p> <p>21 Q. Prosecutor?</p> <p>22 A. Or not prosecutor. He was the</p> <p>23 investigator.</p> <p>24 Q. For the Monmouth County Prosecutor's</p> <p>25 Office.</p>	<p>1 Q. So the title process?</p> <p>2 A. Yes.</p> <p>3 Q. And how the transactions were occurring?</p> <p>4 A. Right.</p> <p>5 Q. And things like that. And then I assume</p> <p>6 it was after that meeting that you turned over these</p> <p>7 original documents to them?</p> <p>8 A. Yeah, I'm sure it was. I am certain it</p> <p>9 was.</p> <p>10 Q. Okay. And that was sometime after this</p> <p>11 -- the frauds became public?</p> <p>12 A. Yes. When we turned over the documents?</p> <p>13 Q. Right.</p> <p>14 A. I'm sure that was after this became</p> <p>15 public.</p> <p>16 Q. Do you recall if you received a subpoena</p> <p>17 from the U.S. Attorney's Office to turn over the</p> <p>18 documents?</p> <p>19 A. I don't recall.</p> <p>20 Q. Who handled that for you?</p> <p>21 A. My attorney, Jim Aaron.</p> <p>22 Q. Mr. Agel, what were Coastal's profits</p> <p>23 for the last three years?</p> <p>24 A. These last three years?</p> <p>25 Q. I'll expand the question if necessary</p>

14 (Pages 190 to 193)

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Page 194

1 but I'll start with that.  
 2 A. Next to zero.  
 3 Q. When was the prior year that Coastal was  
 4 profitable?  
 5 A. Well, I shouldn't say zero. We had a  
 6 profit last year, miniscule, maybe \$50,000. The two  
 7 prior years I think we did show losses, and then  
 8 prior to that I guess the last profitable year was  
 9 2007.  
 10 Q. And what were Coastal's profits at that  
 11 time?  
 12 A. Probably around \$200,000.  
 13 Q. Has the profits -- did they fluctuate  
 14 through the 2000s --  
 15 A. Yes.  
 16 Q. -- or have they been somewhat  
 17 consistent -- what was the most profitable Coastal  
 18 was in the 2000s?  
 19 A. Two and a half, \$3 million.  
 20 Q. And what year was that?  
 21 A. If I had to pick a year it would have  
 22 been 2005.  
 23 Q. Okay. Mr. Agel, I'll ask you to take a  
 24 look at two documents, which we had previously  
 25 marked, which I believe are exhibits King-3 and

Page 195

1 King-4.  
 2 A. Yes.  
 3 Q. And they're again from the deposition of  
 4 Lorraine King. And I ask you just to take a look at  
 5 the two of them.  
 6 A. Okay.  
 7 Q. My first question is: Other than the  
 8 handwriting covering the two title insurance  
 9 commitments, these were title insurance commitments  
 10 issued by Coastal Title?  
 11 A. Correct.  
 12 Q. And then do you recognize any of the  
 13 handwriting on either exhibit King-3 or exhibit  
 14 King-4?  
 15 A. Yes.  
 16 Q. Whose handwriting do you recognize?  
 17 A. The handwriting in the top right.  
 18 Q. And you're pointing to King-3?  
 19 A. On King-3 and King-4, the one on the  
 20 right says, "RD Rose 7/18," and the "CR 8/5," that's  
 21 an employee. I don't know which employee that was.  
 22 I can't remember. I just know that that's how we did  
 23 that. That meant -- RD Rose 7/18 was that was run  
 24 down -- our searcher's name was Rose and it was run  
 25 down on 7/18.

Page 196

1 Q. On July 18?  
 2 A. Yes. And the other one, the CR, that's  
 3 when the cover record would have been ordered.  
 4 Q. On August 5?  
 5 A. August 5, yes, or it would have gone  
 6 into the system for cover on August 5.  
 7 Q. And on King-3 there's a series of other  
 8 things, checks?  
 9 A. Yes.  
 10 Q. Jill Montanye. Do you recognize any of  
 11 those other --  
 12 A. Yes. Those are my searcher's notes.  
 13 Where they did the -- in this case it's the cover  
 14 record. These are essentially the same thing. But,  
 15 yeah, that's my searcher's notes. They write down,  
 16 they look in the index and they -- that's the deed  
 17 book or mortgage book and page 6166, recording date.  
 18 Q. On King-3?  
 19 A. Yes. And down on the bottom are the two  
 20 deeds.  
 21 Q. The 5589?  
 22 A. Dash 39 and 45, yes.  
 23 Q. Okay. And then what is the series of  
 24 checks on the left-hand side, do you know?  
 25 A. Those are the books that the searcher

Page 197

1 ran judgments, liens, that's just significance, that  
 2 they checked those books for any liens that might  
 3 have been intervening between the date of the rundown  
 4 and the date of the original commitment and the date  
 5 of closing -- and date of recording of the documents.  
 6 Q. Okay. And then the document that's  
 7 listed on or as exhibit King-3, that says File Number  
 8 CT-17767 so that's the Coastal Title title number?  
 9 A. Yes.  
 10 Q. Okay. And then the exhibit King-4 has  
 11 got the same number with the capital A?  
 12 A. Correct.  
 13 Q. King-3 was for the purchase and King-4  
 14 was for the sale?  
 15 A. Correct.  
 16 Q. Why is -- the commitment date on both  
 17 King-3 and King-4 is June 16, 1996. Why is that the  
 18 same?  
 19 A. You know, it might be -- sometimes they  
 20 order the title work for both transactions the same  
 21 time.  
 22 Q. Who would have ordered it? Mr. Pepsny?  
 23 A. The original file would have been  
 24 definitely Pepsny. The second file must have been --  
 25 it should have been Yacker but I couldn't tell you

15 (Pages 194 to 197)

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<p style="text-align: right;">Page 198</p> <p>1 for sure.</p> <p>2 Q. It may not have been?</p> <p>3 A. It may not have been.</p> <p>4 Q. So the commitment date was always the</p> <p>5 date that the commitment was ordered?</p> <p>6 A. No. No, that's the date that we can</p> <p>7 search through in County Hall of Records.</p> <p>8 Q. Up through June 16, '96?</p> <p>9 A. That's the furthest we could search that</p> <p>10 property at that time.</p> <p>11 Q. Both King-3 and King-4 have the</p> <p>12 handwritten date of 7/8/96 on it --</p> <p>13 A. Yes.</p> <p>14 Q. -- next to the commitment date. Do you</p> <p>15 know what that date was?</p> <p>16 A. That would be the date probably of the</p> <p>17 rundown. That would be the next date where if we ran</p> <p>18 it down -- say we ran it down July 18, Monmouth</p> <p>19 County back then was about ten days behind in</p> <p>20 indexing so that's the date we searched through.</p> <p>21 Q. Through. Okay. So that was the same</p> <p>22 date for both the purchase and the sale?</p> <p>23 A. Correct. But they might have used --</p> <p>24 it's a different commitment. So, yeah, they might</p> <p>25 have run them both down the same day.</p>	<p style="text-align: right;">Page 200</p> <p>1 Paragraph two, there's two -- an A and a B and little</p> <p>2 empty boxes for the ALTA residential and nothing is</p> <p>3 checked in paragraph two on King Exhibit 3 for the</p> <p>4 purchase but 2(a), the first box is checked,</p> <p>5 Residential Title Insurance Policy, One- to</p> <p>6 Four-Family Residences on the same title commitment</p> <p>7 which is King-4. Why was that?</p> <p>8 A. That is just probably a mistake.</p> <p>9 Something might not have been entered into the</p> <p>10 computer properly because the computer would</p> <p>11 automatically choose -- we put in whether it's a</p> <p>12 commercial or residential property. The ALTA owner,</p> <p>13 that's only issued on commercial properties. So</p> <p>14 somebody didn't fill in whether it was a commercial</p> <p>15 or a residential property on this one.</p> <p>16 Q. On the purchase, on King-3?</p> <p>17 A. Right.</p> <p>18 Q. Okay. And then going down to paragraph</p> <p>19 three and it says: Fee simple interest on King-3 and</p> <p>20 the land is own by Norman Freidman and Arline,</p> <p>21 A-r-l-i-n-e, Freidman as of -- I guess what I viewed</p> <p>22 it as the commitment date of June 16, '96?</p> <p>23 A. As of that date. Correct.</p> <p>24 Q. And then on King-4, which is the sale to</p> <p>25 Miss Montanye, paragraph three, the fee simple says</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. The proposed insured on King-3, the</p> <p>2 purchaser is Cristo Property?</p> <p>3 A. Right.</p> <p>4 Q. The proposed insured on King-4 is Jill</p> <p>5 Montanye. Somebody wrote Jill Montanye's name on</p> <p>6 King-3. Do you know why that would have been done?</p> <p>7 A. Because they picked up the deed into her</p> <p>8 on there so they went and they ran Jill Montanye on</p> <p>9 mortgages, that's why.</p> <p>10 Q. That's what that is there.</p> <p>11 A. These -- down here at the bottom, the D</p> <p>12 and the M, that's deed and mortgage. So they ran</p> <p>13 the -- originally they ran Freidman who was owner.</p> <p>14 Q. The original owner?</p> <p>15 A. And they picked up book 5589, page 39.</p> <p>16 That would have been the deed probably into Cristo.</p> <p>17 They then would have run Cristo and that's when they</p> <p>18 picked up the deed into Montanye. And that's just</p> <p>19 the searcher's -- internal notes essentially.</p> <p>20 Q. These were deeds then that Coastal filed</p> <p>21 because of the April 8, 1997 date?</p> <p>22 A. Yeah, probably.</p> <p>23 Q. Okay. And then one thing I guess I'm</p> <p>24 somewhat confused on is the King Exhibit 3 in</p> <p>25 paragraph -- actually let me ask this question first.</p>	<p style="text-align: right;">Page 201</p> <p>1 the property is owned by Cristo Property Management</p> <p>2 on the same date so I don't know, am I</p> <p>3 misunderstanding this?</p> <p>4 A. No, you're not.</p> <p>5 Q. Okay. The open-ended question: Why or</p> <p>6 how -- why is the title commitment showing that the</p> <p>7 Freidmans own the property at the same time Cristo</p> <p>8 owns the property?</p> <p>9 A. It goes back to the conversations with</p> <p>10 Pepsny and Kane about getting the clean commitments</p> <p>11 to the lender.</p> <p>12 Q. So the title insurance commitment that</p> <p>13 was going to the lender is King-4?</p> <p>14 A. Yes.</p> <p>15 Q. And then is there any reason why</p> <p>16 paragraph three, it says it's owned by Cristo from</p> <p>17 the Freidmans and it says dated blank, records blank,</p> <p>18 but on paragraph three on King-3 it says the deed</p> <p>19 dated January 23, 1982 recorded February 13, 1986,</p> <p>20 that deed information is not filled in in paragraph</p> <p>21 three on King-4?</p> <p>22 A. Yeah, because the deed wasn't recorded.</p> <p>23 Q. Is there anything unusual about that?</p> <p>24 A. Yes.</p> <p>25 Q. And so normally these title insurance</p>

16 (Pages 198 to 201)

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<p style="text-align: right;">Page 202</p> <p>1 commitments would have the deed information filled 2 in? 3 A. Correct. 4 Q. And was it Mr. Kane's properties -- I 5 assume a lot of them didn't have the deeds filled 6 in -- 7 A. Correct. 8 Q. -- because of this. Did you have any 9 other clients in which you had the same kind of issue 10 where the deeds were not -- deed information was not 11 filled in? 12 A. No. 13 Q. And it's only because the deed from the 14 Freidmans to Cristo Property had not been recorded 15 already? 16 A. Correct. 17 Q. On King-4 there's these little symbols 18 under paragraph four. Do you know what they are? 19 A. Yes, that's -- that was the cover 20 record. They're looking for the deeds from Cristo to 21 Montanye and the mortgage from Montanye to National 22 Home Funding. The "N" with a line through it, that's 23 searcher's lingo for "none." 24 Q. "None"? 25 A. Yes.</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. This is actually Bates stamped FY 8932, 2 which is produced by Fidelity as opposed to Nations 3 Title. Do you have any idea how Fidelity obtained a 4 copy of this memo? 5 A. It would apparently have been in our 6 file. 7 Q. And so what was the purpose of Miss King 8 sending Sally this memo? 9 A. This would be the order for the title, 10 title commitment. 11 Q. Okay. Is this generally how they came 12 in from Mr. Kane's sales, a group of them at a time? 13 A. Not always a group at a time. Some came 14 in individually, some came in like this. 15 Q. So I've seen -- we've seen the order for 16 the purpose -- from Mr. Alfieri's office and I think 17 I'm fairly sure by March of 1997 Mr. Kane had begun 18 using Mr. Cicalese although Miss King continued to 19 work on Mr. Kane's transactions whether she was at 20 Yacker's office or Cicalese. So she's sending this 21 then over. And do you recall: How would Mr. Yacker 22 send you correspondence requesting a title binder be 23 ordered? 24 A. I think the same way. 25 Q. Just in a memo form like this?</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. So there's no deed and no mortgage 2 recorded at that time? 3 A. Right. 4 Q. And then the number off to the 5 right-hand side, 7/64? 6 A. You know, I don't know. I just don't 7 remember. It's been a long time since we did 8 searches this way. I never did these searches, I 9 hired people to do them so -- I don't remember. We 10 do it all by computer now. 11 Q. That's what I thought and I just 12 couldn't fathom what that number represented. 13 A. I'm with you. 14 Q. Okay. I guess on that note we will take 15 a lunch break then. 16 (A lunch recess takes place.) 17 Q. Mr. Agel, I ask you to look at what was 18 mark as King Exhibit 23 -- 19 A. Uh-huh. 20 Q. -- which purports to be a memorandum 21 from Lory King to Sally dated March 26, 1997, Re: 22 Binders needed, and ask you to take a look at this 23 and let me know if you have seen this before. 24 A. I have seen memoranda like this. I 25 don't know if I saw this one in particular.</p>	<p style="text-align: right;">Page 205</p> <p>1 A. Yeah, I think so. 2 Q. Would a copy of this memo go in each of 3 these -- 4 A. Yes. 5 Q. -- files? 6 A. Yes. 7 Q. Mr. Agel, I'm going to show you three 8 exhibits that were previously marked in the 9 deposition of Lorraine King. They're King-16, which 10 is a mortgage between Walsh Securities and Alphonse 11 and Elaine Salvatoriello for the purpose of 12 purchasing a property at 155 Chelsea Avenue in Long 13 Branch, and attached to that is the deed between 14 Salvatoriellos and Capital Assets, which I have been 15 calling the joint venture deed, the 60/40, which is 16 also dated July 26 of 1996, and then there's also a 17 deed between Cristo Property and the Salvatoriellos 18 dated July 26, 1996 and all of these are Bates 19 stamped SYSW 4519 through 4525, and they were all 20 produced by Mr. Yacker. 21 And then while you look at that I will 22 also introduce an exhibit King-17 from Miss King's 23 deposition, which is also from Mr. Yacker's files 24 Bates stamped SYSW 4516 through 4518. And that is a 25 letter from the City of Long Branch dated May 13,</p>

17 (Pages 202 to 205)

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Page 206

1 1997 enclosing another letter dated April 18, 1997  
 2 from the tax assessor to Mr. Yacker.  
 3 And then the last exhibit is King-18,  
 4 which is again produced from Mr. Yacker's files,  
 5 Bates stamped SYSW 4536 through 4546, and this is a  
 6 document for recording Mr. Yacker sent to the  
 7 Monmouth County Clerk I believe on February 10, 1997.  
 8 And these are documents again with the -- concerning  
 9 the sale of the 155 Chelsea Avenue between Cristo and  
 10 the Salvatoriellos and ask you just to take a look at  
 11 those.  
 12 A. Okay.  
 13 Q. I ask you: Do you have any recollection  
 14 beyond looking at these documents for any issues  
 15 concerning the sale of 155 Chelsea Avenue?  
 16 A. No.  
 17 Q. And do you recall seeing the mortgage  
 18 before this date, what is marked as King-16?  
 19 A. No.  
 20 Q. Was there any reason you would see that  
 21 as part of your file on the property?  
 22 A. If I had worked on it, on that file at  
 23 that time, sure, I would have seen it.  
 24 Q. The mortgage would have been in --  
 25 A. If recorded, yes.

Page 207

1 Q. If recorded. Okay. And then this deed,  
 2 if you turn to the second page of Exhibit 16, SYSW  
 3 4520, that's the joint venture deed --  
 4 A. Right.  
 5 Q. -- as you said. Would those be in your  
 6 file?  
 7 A. Probably if we recorded it, yes. I  
 8 probably would have picked it up in the search if we  
 9 didn't record it.  
 10 Q. If it had been recorded you would have  
 11 picked it up.  
 12 A. Uh-huh.  
 13 Q. And then if you could turn to the page  
 14 that's Bates stamp SYSW 04523.  
 15 A. Right.  
 16 Q. And this is the deed date July 26, 1996  
 17 between Cristo and the Salvatoriellos, the -- there's  
 18 a paragraph typed in at the bottom that says: "Being  
 19 the same premises conveyed to the grantor herein by  
 20 deed from D&Sons Construction Corp. dated August 9,  
 21 1995 and intended to be recorded in the Monmouth  
 22 County Clerk's Office simultaneously herewith and  
 23 immediately prior hereto."  
 24 Do you have any idea why that was put on  
 25 this deed? It's not something we have seen on all

Page 208

1 the other deeds.  
 2 A. I don't know why it was put on this one  
 3 and not other ones, but that's pretty normal language  
 4 to find in a deed that -- when you had one of these  
 5 flip transactions.  
 6 Q. So this would indicate to you that  
 7 D&Sons is the original owner of the property?  
 8 A. Right.  
 9 Q. And then they were going to deed it to  
 10 Cristo who's already sold it to the Salvatoriellos?  
 11 A. Yes.  
 12 Q. These are instructions to the clerk?  
 13 A. No, that's just the recital as to how  
 14 you took title to the property or how Cristo took  
 15 title to the property.  
 16 Q. And then if you could take a look at  
 17 what's marked as King-17. So I guess according to  
 18 that Cristo got title from D&Sons Construction?  
 19 A. Yes.  
 20 Q. Okay. And then if you take a look at  
 21 King-17, I would ask you to let me know if you have  
 22 ever seen this --  
 23 A. No.  
 24 Q. -- before today? And then did Coastal  
 25 Title ever receive copies of correspondence from the

Page 209

1 tax assessor that were sent to counsel?  
 2 A. No.  
 3 Q. Would counsel contact Coastal if they  
 4 received a copy of correspondence similar to Exhibit  
 5 17?  
 6 A. Meaning Yacker or Pepsny?  
 7 Q. Right.  
 8 A. I would have liked them to.  
 9 Q. Do you recall them ever doing that?  
 10 A. No.  
 11 Q. This attached letter, April 18, says  
 12 there was no record of transferring title from D&Sons  
 13 Construction to Cristo.  
 14 Now, Mr. Pepsny testified yesterday he  
 15 became aware of this occurring because some of the  
 16 original sellers were still being contacted by the  
 17 tax assessor or people like that and title had never  
 18 been transferred so he said that was an indication to  
 19 his law firm that the deeds had not been recorded.  
 20 A. Right.  
 21 Q. Do you recall any discussion with Mr.  
 22 Pepsny about that?  
 23 A. No.  
 24 Q. So do you recall anything about any of  
 25 the cover searches on 155 Chelsea that you could not

18 (Pages 206 to 209)

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<p style="text-align: right;">Page 210</p> <p>1 locate the deed from D&amp;Sons to Cristo?</p> <p>2 A. No.</p> <p>3 Q. If you take a look at King Exhibit 18,</p> <p>4 as I said it's a memorandum to record documents from</p> <p>5 Mr. Yacker. Have you ever seen this group of</p> <p>6 documents before?</p> <p>7 A. I've seen this form. I wouldn't</p> <p>8 particularly remember -- I wouldn't remember this</p> <p>9 one. I wouldn't remember individual ones but I have</p> <p>10 seen that form.</p> <p>11 Q. Okay. And then -- this form was used by</p> <p>12 Mr. Yacker to send documents to the -- to the county</p> <p>13 clerk for recording.</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then in the documents that</p> <p>16 Mr. Yacker sent in for recording there was no deed</p> <p>17 from D&amp;Sons Construction to Cristo. And I'll</p> <p>18 represent to you we've done searches at the County</p> <p>19 Clerk's office and the deed from D&amp;Sons to Cristo was</p> <p>20 never recorded. Even as of last --</p> <p>21 MS. WAGNER: Last month.</p> <p>22 Q. How does a failure to record the deed</p> <p>23 transferring property from D&amp;Sons to Cristo impact</p> <p>24 the deed transferring the property from Cristo to</p> <p>25 Salvatoriello?</p>	<p style="text-align: right;">Page 212</p> <p>1 between D&amp;Sons and Cristo impact Walsh Securities</p> <p>2 which was the lender?</p> <p>3 MR. KOTT: Object to the form.</p> <p>4 MS. ELGART: Objection.</p> <p>5 MR. McGOWAN: You can answer.</p> <p>6 A. They have an outstanding interest in the</p> <p>7 property of D&amp;Sons.</p> <p>8 Q. Again, as we discussed, that's why we</p> <p>9 have title insurance policies.</p> <p>10 MR. KOTT: Object to the form.</p> <p>11 MS. ELGART: Objection.</p> <p>12 Q. That they would make a claim under?</p> <p>13 MR. McGOWAN: You can answer.</p> <p>14 A. That's why they have -- in the end I</p> <p>15 think that was more of a closing service letter.</p> <p>16 Q. Action that was covered by the closing</p> <p>17 service letter?</p> <p>18 A. Right. We did not issue -- I could</p> <p>19 guaranty you I did not issue a policy on that file if</p> <p>20 we didn't pick up a deed out of D&amp;Sons. I can</p> <p>21 guaranty it.</p> <p>22 Q. So even though a title insurance policy</p> <p>23 was never issued, the closing protection letter is</p> <p>24 still valid?</p> <p>25 MR. KOTT: Object to the form.</p>
<p style="text-align: right;">Page 211</p> <p>1 MR. KOTT: I object to the form.</p> <p>2 MR. McGOWAN: You can answer if you can.</p> <p>3 A. It impacts it by making it useless</p> <p>4 essentially. The title is still vested -- would be</p> <p>5 vested in D&amp;Sons at that time.</p> <p>6 Q. And so as we said we just have learned</p> <p>7 that it still -- apparently the deed was never</p> <p>8 transferred to Cristo so the Salvatoriellos never</p> <p>9 actually took title to the property?</p> <p>10 A. They had color of title. They would</p> <p>11 have a claim to title. They would have -- you know,</p> <p>12 you would have to get that deed out of D&amp;Sons in</p> <p>13 order to get them insurable title. But these -- I</p> <p>14 shouldn't say all of them, but a lot of these have</p> <p>15 been cleaned up through the foreclosure process.</p> <p>16 There were orders, you know, recording copies of</p> <p>17 deeds as a part of an order, and mortgages, things</p> <p>18 like that.</p> <p>19 Q. When you talk about the foreclosure</p> <p>20 process, was that after the frauds became public?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So not during the foreclosure</p> <p>23 process when Mr. Kane was acquiring properties?</p> <p>24 A. Right, right.</p> <p>25 Q. Okay. So how does the lack of deed</p>	<p style="text-align: right;">Page 213</p> <p>1 MR. McGOWAN: You can answer.</p> <p>2 MS. ELGART: Objection.</p> <p>3 A. That's above my pay grade. Military</p> <p>4 terms.</p> <p>5 MR. KOTT: The witness sustained my</p> <p>6 objection.</p> <p>7 MR. MAGNANINI: Actually he didn't. He</p> <p>8 said his wife would know, not him.</p> <p>9 Q. Okay. In a case like this when you</p> <p>10 said -- I may be repeating myself -- for 155 Chelsea</p> <p>11 since -- if you had picked up that there was no deed</p> <p>12 from D&amp;Sons Construction to Cristo, you would not</p> <p>13 have issued a title insurance policy, even though</p> <p>14 Coastal Title had been paid for it at closing?</p> <p>15 A. Correct, yes.</p> <p>16 Q. And even though the closing protection</p> <p>17 letter had been paid for as well?</p> <p>18 A. Right.</p> <p>19 Q. And so I'm still -- you just kept the</p> <p>20 money or what would happen?</p> <p>21 A. No. It got paid over to Commonwealth or</p> <p>22 Fidelity. Remember we segregated that money, we</p> <p>23 assigned the policy number and we remitted on it. I</p> <p>24 mean, they would have been paid.</p> <p>25 Q. I understand that, but if you came upon</p>

19 (Pages 210 to 213)

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Page 214

1 something like this where you could not issue title  
2 insurance because of this deed that's never recorded,  
3 so as far as you're concerned title still vests in  
4 D&Sons and never vested with Cristo despite them  
5 selling it?

6 A. No insurable title vested in them.

7 Q. And so if a title insurance policy  
8 couldn't be issued, wouldn't the title insurance  
9 companies be obligated to refund the money?

10 MR. KOTT: Object to the form.

11 MS. ELGART: Objection.

12 A. I don't think so.

13 MR. KOTT: Can I ask the witness a  
14 question? I think what Mr. Magnanini is asking you  
15 is: If you don't issue a policy, in that situation  
16 you have been paid, do you send that money to the  
17 title insurance companies where you don't issue a  
18 policy or do you return it to the --

19 THE WITNESS: No, it goes to the  
20 insurer, it goes to Commonwealth or Fidelity.

21 MR. KOTT: Even where no policy was  
22 issued?

23 THE WITNESS: Right. Because in the end  
24 we're still asking for objections to be cleared.

25 That is an objection that could be cleared. You saw

Page 215

1 those letters to Pepsny saying: Open mortgages. If  
2 it had gone that far -- remember this was at the time  
3 when this thing started to fall apart. Everybody  
4 stopped doing everything on these files. So they  
5 stopped clearing up any objections and so we just --  
6 that's when we stopped issuing policies, but if this  
7 had been ongoing they would have -- presumably they  
8 would have cleared this up like they cleared up every  
9 other objection.

10 Q. By obtaining the deed from D&Sons to  
11 Cristo?

12 A. That's right.

13 Q. Okay. And so then you've already paid  
14 the title insurance companies. Once that objection  
15 is cleared you just issue the policy?

16 A. Correct.

17 Q. Okay. I'm just having -- I'm so used to  
18 having money -- especially in a residential consumer  
19 type of thing the money would be refunded, but you're  
20 saying if in the end you determined you could not  
21 issue the title policy the title insurance company  
22 kept the money?

23 A. Or we would go one step further at times  
24 and we might put that in the policy as an exception  
25 to title.

Page 216

1 Q. Still issue a policy?

2 A. And have an exception. We've done that  
3 many times. You finally just give up on the attorney  
4 doing his job properly. I hate to disparage  
5 attorneys but --

6 Q. It comes with the job.

7 A. No, we get disparaged too but I will put  
8 that in as an exception. We will put a letter out  
9 that says: Here's your policy, here's the exception,  
10 give us proof that it's been properly cleared and we  
11 will do an endorsement to omit it. That's when we  
12 finally just give up.

13 So these policies probably would have  
14 been issued at some point with an exception in it,  
15 but it all stopped, everything came to a stop.

16 Q. Okay. And it came to a stop because you  
17 were directed not to issue the policies?

18 A. In the end, yes.

19 Q. So just so I clear it out of my head,  
20 outside of Mr. Kane's companies' transactions have  
21 you ever had a situation where you have returned the  
22 money you were paid for the title insurance or  
23 closing protection letter to the closing lawyer?

24 A. To the attorney?

25 Q. To the attorney to give back because

Page 217

1 title insurance couldn't -- I guess where I'm  
2 confused, I mean, as I said before as soon as you --  
3 there's a lender involved, you get a request for  
4 title insurance, the closing protection letter is  
5 issued. That's paid for. You've done a number of  
6 searches and there's a basic search charge of 105.  
7 That's for services rendered, but if no policy ever  
8 gets issued, the \$875 on that example, have you ever  
9 had a situation where it was returned from the title  
10 company to you and then returned to the closing  
11 attorney?

12 A. No.

13 Q. Okay. Off the record.

14 (A discussion takes place off the  
15 record).

16 Q. Mr. Agel, I've shown you a series of  
17 exhibits that we've used at Commonwealth's 30(b)6  
18 depositions and they were on May 27th and they're  
19 marked Commonwealth Exhibit 8 through Commonwealth  
20 18, and I'll just go through and identify them for  
21 the record.

22 Commonwealth Exhibit 8 is a deed between  
23 Osis Corporation and G.J.L. Limited dated December  
24 19, 1996 transferring title to 138 Ridge Avenue in  
25 Asbury Park and prepared by Mark Steinberg. And then

20 (Pages 214 to 217)

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Page 218

1 Exhibit 9 is a deed which is actually from Coastal's  
2 files, Exhibit 9, CTB 1198 to 1200, which is a deed  
3 dated December 31, 1996 between G.J.L. Limited and  
4 Rafael Bustos Senior conveying 138 Ridge. Exhibit 10  
5 is again from Coastal's files, Bates stamped CTB 1202  
6 to 1204, which is the joint venture deed, as I have  
7 been calling it, from Mr. Bustos conveying 60 percent  
8 interest in 138 Ridge Avenue to Capital Assets  
9 Property Management and 40 percent to Mr. Bustos  
10 dated January 7, 1997.

11 MR. McGOWAN: The last two exhibits you  
12 said a deed from Coastal. What you mean is from the  
13 Coastal Bates stamping.

14 MR. MAGNANINI: Produced by Coastal,  
15 Marty, yes.

16 Q. And then the next, Exhibit 11, also was  
17 produced by Coastal. It's Bates stamped CTB 1154  
18 through 1166, which is a title insurance policy.

19 A. No, this is a commitment.

20 Q. Title insurance commitment from  
21 Commonwealth Land Title Insurance Company. Exhibit  
22 12 is also from -- produced by Coastal, Bates stamped  
23 CTB 1188 to 1192, which is Commonwealth title  
24 insurance commitment with an (A) in it. So on the  
25 sale from Coastal to Mr. Bustos.

Page 219

1 Exhibit 13 is an invoice from Coastal  
2 Title Agency to Stanley Yacker dated October 30, 1996  
3 for title insurance policy, closing service letter  
4 and searches on 138 Ridge Avenue produced by Coastal  
5 Title and Bates stamped CTB 1150 and 1151. And then  
6 the next exhibit is actually listed as 6(A).

7 A. Right.

8 Q. Do you have that? That's a closing  
9 service letter to National Home Funding, its  
10 successors and assigns. The Re is: Stanley Yacker  
11 as attorney on the transaction of 138 Ridge Avenue  
12 and that's produced from -- that's actually from  
13 Walsh Securities wire transfer. That's what that  
14 stands for, 505 and 506. And then we had -- the next  
15 exhibit is Commonwealth number 15 which is a copy of  
16 Mr. Yacker's trust fund and ledger, Bates stamped  
17 SYSW 7085 through 70 -- sorry. I guess it's 7083 to  
18 7086. Just out of order.

19 And the next exhibit was Commonwealth  
20 number 14, which was Bates stamped CTB 11 -- or 1205  
21 and it's a check from Mr. Yacker to Coastal Title.  
22 And the next exhibit is Commonwealth 16, which was  
23 from Coastal's file as well as, as you see, CTB 1234,  
24 and then the next item was Commonwealth 17, which was  
25 produced by Walsh Securities, Bates stamped 44744 to

Page 220

1 44746 and is the closing instructions from Walsh  
2 Securities. And then the last is Commonwealth 18,  
3 which is the final judgment on a tax lien on the  
4 property at 138 Ridge Avenue, which I believe we got  
5 from the Superior Court in the County of Monmouth  
6 which was filed --

7 A. You got this off the county website.

8 Q. Yes. And so that was filed July 31,  
9 2002. Mr. Agel, I ask you to take a look at this  
10 compilation of documents. I guess you've had a  
11 chance to review it.

12 On the Commonwealth Exhibit 8 what does  
13 the "R and R" mean on the top right-hand written in?

14 A. Record and return.

15 Q. So that means this deed had been filed  
16 by the offices of Michael Alfieri and would be  
17 returned to them?

18 A. Correct.

19 Q. And so this -- this deed shows that  
20 G.J.L. Limited acquired 138 Ridge on December 19,  
21 1996?

22 A. Correct.

23 MR. KOTT: Is that a 19 or 16?

24 THE WITNESS: Looks like a 16.

25 Q. It might be December 16. How much did

Page 221

1 G.J.L. Limited purchase this property for?

2 A. It says \$1,500 and payment of all  
3 outstanding taxes, sewer charges and interest.

4 Q. Turning to the next exhibit,  
5 Commonwealth-9, this "R and R" means this deed was  
6 supposed to be returned to Mr. Yacker?

7 A. Correct.

8 Q. And it was prepared by Mr. Pepsny?

9 A. Yes.

10 Q. As the seller's attorney?

11 A. Yes.

12 Q. And what is the sale price?

13 A. \$186,500.

14 Q. And so that two weeks after it was  
15 purchased for \$1,500 --

16 A. It wasn't purchased for \$1,500. Plus  
17 the outstanding sewer and tax bills, and I've seen  
18 this before, and I've seen those numbers be huge,  
19 enormous numbers. You can look on a closing  
20 statement and figure out what it was. It was not  
21 \$1,500. They gave her \$1,500 and paid off all the  
22 debts. So that could be anywhere from \$1,500 and  
23 186. I am sure it wasn't 186 though.

24 Q. At Coastal would you get copies of the  
25 HUD-1, the closing statement for the purchases that

21 (Pages 218 to 221)

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Page 222

1 Mr. Kane made?

2 A. You know, I don't remember if we did or

3 didn't. We love to get them, we prefer to get them,

4 we beg for them, but we don't always get them, and I

5 just don't remember if we got HUDs from them.

6 Q. It wasn't -- I guess while it was

7 preferred it wasn't required?

8 A. That's correct.

9 Q. You couldn't make it mandatory?

10 A. No.

11 Q. On the Exhibit No. 8 there's a -- well,

12 there's both a stamp from County of Monmouth and then

13 there's a copy of the receipt filing.

14 A. Yeah. That's on the final judgment

15 you're talking about?

16 Q. No. On the initial -- the one from Osis

17 to G.J.L.

18 A. Yeah. And what was the question?

19 Q. This shows that this deed was filed by

20 or filed with Monmouth County. Correct?

21 A. Yes.

22 Q. And then the next deed, which is Exhibit

23 No. 9, does not have either the Monmouth County stamp

24 or the receipt showing the payment of the fees.

25 A. Correct.

Page 223

1 Q. And I guess my question is: Would you

2 have -- this deed came from Coastal's files. Would

3 you have unrecorded deeds or you retained copies of

4 deeds that were to be filed?

5 A. We retained copies of everything we

6 filed. This probably is one of the ones where maybe

7 the original went to the FBI.

8 Q. Well, it's from December of '96. I was

9 wondering if it was one of the ones that had been

10 filed in April of '97.

11 A. It's possible. You would have to go on

12 line and see.

13 Q. Okay. Miss Wagner is pointing out to me

14 that this deed was never filed transferring ownership

15 from G.J.L. to the Bustos.

16 A. It's my recollection there were a fair

17 amount of deeds that were not recorded, that just

18 didn't get recorded.

19 Q. Even beyond the large group that you

20 filed?

21 A. Yes.

22 Q. And even from the time period prior to

23 you filing those deeds?

24 A. I don't know what time period they would

25 be from, when we closed them. I do remember that

Page 224

1 there were more deeds that were supposed to be

2 recorded that did not get recorded for similar

3 reasons -- not similar, for the same reasons as the

4 previous batch, the one that we recorded, that large

5 batch that we recorded.

6 Q. Right.

7 A. There were more that had the same

8 problem where Yacker didn't have money in his trust

9 account to pay transfer taxes and recording fees.

10 Q. Did you have any discussions with Mr.

11 Yacker or Mr. Pepsny about those, the deeds that you

12 weren't able to record?

13 A. The second group? Probably but I don't

14 recall.

15 Q. Did you ever file a second -- actually

16 last time when we talked I thought you said that

17 there might have been another batch.

18 A. Yes, I think there was and this could be

19 part of that batch.

20 Q. So they were filed by Coastal?

21 A. The first batch, yes, they were all

22 filed by Coastal.

23 Q. And then was a second batch of deeds and

24 mortgages filed by Coastal?

25 A. I don't think so. I think we were

Page 225

1 trying to get those deeds. That was right around the

2 time that everything blew up and we just pretty much

3 washed our hands of doing business with them at that

4 point.

5 Q. So other than that \$50,000 payment that

6 you recalled, which may have come from Mr. Cicalese,

7 you never got paid money by Mr. Cicalese or Mr.

8 Pepsny or Mr. Kane to file any other batch of deeds?

9 A. No.

10 Q. That may explain why Exhibit 9 was never

11 filed. Then if you take a look at Commonwealth

12 Exhibit 10, which was the joint venture deed?

13 A. Yes.

14 Q. That's prepared by Lorraine King. Is

15 there anything improper about having a non-attorney

16 prepare a deed?

17 A. I think it's incredibly unusual. You

18 know, I guess that would be up to a judge whether

19 it's the unauthorized practice of law.

20 Q. In your experience you don't see that --

21 A. We see it.

22 Q. -- too often?

23 A. I sold a house a couple of years ago and

24 I prepared the deed. I mean, anyone can prepare a

25 document. Just a question of whether you charge and

22 (Pages 222 to 225)

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Page 226

1 you give legal advice while doing it. It's unusual  
 2 but it's not --  
 3 Q. She was receiving \$250 a closing.  
 4 A. I think she would have a problem then.  
 5 Q. Why would this deed -- do you know why  
 6 would this have record and return to Mr. Yacker?  
 7 A. I don't know.  
 8 Q. If you can go to the next exhibit, which  
 9 is the title commitment, and the date on that is  
 10 October 14, 1996. And then this one, again the file  
 11 number is CT 18724 with an (A) in parenthesis. So  
 12 that's showing that this was the commitment on the  
 13 sale to Mr. Bustos?  
 14 A. Right.  
 15 Q. When you ran the searches at this point,  
 16 October 14, 1996, that would have shown that Osis  
 17 Corp. still owned the property since the deed didn't  
 18 transfer until December 16?  
 19 A. Yes. That would be in the file without  
 20 the (A).  
 21 Q. Okay. And then -- so on the file with  
 22 the (A) you wouldn't annotate that -- you would have  
 23 this paragraph three which has got --  
 24 A. The blanks.  
 25 Q. -- the blanks in it because at that

Page 227

1 point in time Cristo doesn't have possession --  
 2 A. Correct.  
 3 Q. -- of the property. Mr. Agel, if you  
 4 can flip to CTB 1159, in that exhibit there's a list  
 5 of exceptions.  
 6 A. Yes.  
 7 Q. Down at the bottom it says,  
 8 "Countersigned By," it says "Authorized Signatory."  
 9 Who would sign that?  
 10 A. Me.  
 11 Q. So again because this is a file copy I  
 12 assume it's not signed?  
 13 A. Correct.  
 14 Q. On the next page as well there's the  
 15 ALTA endorsement form number one. Says  
 16 "Countersigned By."  
 17 A. Also me.  
 18 Q. And I assume on 1161, the environmental  
 19 protection letter.  
 20 A. Correct.  
 21 Q. You would sign all of these?  
 22 A. Yes. These are specimens of what would  
 23 be attached to the final policy.  
 24 Q. Okay. So before the final title policy  
 25 issued I guess you would be able to fill in the

Page 228

1 missing spaces in paragraph three?  
 2 A. Correct.  
 3 Q. But not until you had actually seen that  
 4 the deed had been filed?  
 5 A. Correct.  
 6 Q. The deed between Osis and Cristo?  
 7 A. Correct.  
 8 Q. Another "what if" question. On Exhibit  
 9 11, page 1157, if you have a chance.  
 10 A. Same.  
 11 Q. That you had.  
 12 A. Okay.  
 13 Q. It says under C-1, "You must have the  
 14 deed by Cristo to the proposed insureds." What if in  
 15 the interim between Cristo buying the property Osis  
 16 sold it to someone else and Cristo had already then  
 17 sold it to Bustos. What happens to Bustos at that  
 18 point?  
 19 A. They got a big problem. They don't own  
 20 it. I mean, they have got legal remedies against  
 21 Osis, I mean, but -- actually not Osis.  
 22 Q. It would be against Cristo.  
 23 A. Against Cristo, and Cristo would have a  
 24 basis to sue them.  
 25 Q. Would they also have remedy through the

Page 229

1 title policy?  
 2 A. If we had issued a policy with no  
 3 exceptions, yes.  
 4 Q. What happens if it occurred while you  
 5 were still -- you had issued a title commitment but  
 6 not a policy?  
 7 MR. KOTT: I object to the form.  
 8 MS. ELGART: Objection.  
 9 MR. McGOWAN: You can answer it.  
 10 A. You know, I don't know what would  
 11 happen. I have never seen it happen.  
 12 Q. Okay. And then the lender would have  
 13 recourse through the closing service letter if they  
 14 already lent money to Bustos on the sale from -- or  
 15 the purchase from Bustos to Cristo?  
 16 MR. KOTT: Excuse me. Object to the  
 17 form.  
 18 MS. ELGART: Objection.  
 19 MR. McGOWAN: You can answer.  
 20 A. Possibly.  
 21 Q. Why possibly?  
 22 A. Because once again that's above my pay  
 23 grade. That's just -- that's in the claims  
 24 department. That's way beyond us.  
 25 Q. And then Commonwealth Exhibit 12, is

23 (Pages 226 to 229)

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Page 230

1 this called a marked-up title commitment?  
 2 A. No. This is what -- we looked at this  
 3 earlier on another file. This is the work product  
 4 for the searchers. They're doing a cover record.  
 5 Q. What is a marked-up title commitment?  
 6 A. That's when a title officer or the  
 7 attorney, depends on who is at the closing, marks up  
 8 the title commitment to show that the requirements  
 9 have been met, that, for instance, everything in  
 10 Schedule B, Section 1 would be marked "omit" as long  
 11 as everything in Schedule B, all requirements, were  
 12 complied with. And you would -- in this case we  
 13 would omit everything -- probably items one through  
 14 five on Schedule B, Section 2 and the other items  
 15 would remain as exceptions.  
 16 Q. As exceptions. Okay. Could you issue  
 17 title insurance if you did not receive the marked-up  
 18 title commitment back from the closing attorney?  
 19 A. We rarely get marked-up title  
 20 commitments.  
 21 Q. You rarely receive them?  
 22 A. To this day.  
 23 Q. Okay. So you just -- even if it's not  
 24 marked up you go ahead and run your cover searches  
 25 and then issue your title insurance policy?

Page 231

1 A. Yes.  
 2 (A discussion takes place off the  
 3 record).  
 4 Q. On Exhibit 12, Mr. Agel, requirements  
 5 under D. It says: "You must tell us in writing the  
 6 name of anyone not referred to in this commitment who  
 7 will get an interest in the land or who will make a  
 8 loan on the land. We may then take additional  
 9 requirements or exceptions."  
 10 And my question is: The joint venture  
 11 deeds that we had talked about earlier, did that --  
 12 did you know about those prior to issuing a the  
 13 commitment or do they somehow violate what's being  
 14 requested here.  
 15 MR. KOTT: I object to the form.  
 16 MR. McGOWAN: I object to the form as  
 17 well.  
 18 MS. ELGART: Objection.  
 19 Q. It's a compound question but you can  
 20 answer.  
 21 A. We didn't know about the second deed.  
 22 We didn't know about the second deed until after they  
 23 were recorded, when they first started recording  
 24 them.  
 25 Q. So initially Mr. Yacker I would assume

Page 232

1 as the buyer's attorney or Mr. Pepsny as the seller's  
 2 attorney, nobody discussed with you that at the  
 3 closing the straw buyer would convey 60 percent of  
 4 their interest in the property to a -- another  
 5 entity?  
 6 A. Correct.  
 7 Q. So under D, they should have revealed  
 8 that to you?  
 9 A. Yes.  
 10 Q. What would have happened if they  
 11 revealed it at that time?  
 12 A. We would have called for the deed -- we  
 13 would make it a requirement that the deed get  
 14 recorded, that we search those people. That we do --  
 15 and conceivably that we insure them. It's just part  
 16 of the information gathering process that we -- we  
 17 don't know what we would do unless we got that  
 18 answer.  
 19 Q. Because you didn't learn it, what  
 20 happened -- or what did you do once you learned about  
 21 it, once you had to file these -- those deeds in  
 22 April of '97?  
 23 A. Well, I think there were deeds into --  
 24 the joint venture deeds. I think that there were  
 25 joint venture deeds recorded prior to '97. I think

Page 233

1 they did them -- they didn't do them simultaneously  
 2 at first.  
 3 Q. Why not? Do you know?  
 4 A. I don't know. But we did not -- we  
 5 called and we asked -- that's when we asked what was  
 6 going on. What are we insuring? Are we insuring the  
 7 joint venture deed or are we insuring the deed into  
 8 the purchase money mortgagors.  
 9 Q. Who did you have that conversation with?  
 10 A. That would probably have been Yacker.  
 11 Q. And do you recall if Mr. Yacker  
 12 responded or did he direct you to Mr. Pepsny?  
 13 A. No. In that case I am pretty sure he  
 14 responded directly. He had to get back to me. I  
 15 don't know who he spoke to but he did not get back to  
 16 me -- he didn't tell me on that telephone  
 17 conversation.  
 18 Q. Would it have been more expensive for  
 19 Kane to insure the joint venture and the individual  
 20 buyers as opposed to just the individual buyer?  
 21 A. I don't think so, not materially. A few  
 22 dollars.  
 23 Q. Can you think of any reason why they  
 24 told you not to insure the joint venture other than  
 25 them not wanting it to --

24 (Pages 230 to 233)

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516-608-2400

3e478b50-37d1-4229-9354-18292c3c480e

Page 234

1 A. No.  
 2 Q. -- be known? Okay. I ask you to take a  
 3 look at Exhibit 13 and tell me what that is.  
 4 A. That's an invoice issued by Coastal  
 5 Title Agency to Stanley Yacker on 138 Ridge Avenue in  
 6 Asbury Park.  
 7 Q. Okay. And that's a form you regularly  
 8 used in the course of your business?  
 9 A. Yes.  
 10 Q. If you could take a look at Exhibit 6  
 11 (A).  
 12 A. Yes.  
 13 Q. And tell me what that is.  
 14 A. That's a closing service letter.  
 15 MR. KOTT: I object to the form.  
 16 MS. ELGART: Objection.  
 17 MR. McGOWAN: You can answer.  
 18 A. Closing service letter.  
 19 Q. And then if you go to the second page  
 20 that Bates stamped WSWT 506, is that your signature  
 21 on the bottom?  
 22 A. It could be -- yeah. It's evolved over  
 23 the years.  
 24 Q. Did you sign these letters by hand or it  
 25 was a stamp?

Page 235

1 A. No. Everything would have been signed  
 2 by hand.  
 3 Q. Do you know why the closing service  
 4 letters we've seen or some that we've seen, I'll say,  
 5 from either Fidelity or Nations had a Subparagraph F  
 6 on the second page?  
 7 A. I don't recall what that said.  
 8 Q. Okay. Do you know why the forms of  
 9 closing protection letters were different between  
 10 Fidelity and Commonwealth?  
 11 MR. KOTT: Object to the form.  
 12 MS. ELGART: Objection.  
 13 MR. McGOWAN: You can answer.  
 14 A. Every company files their own forms with  
 15 the Department of Insurance, and while they're fairly  
 16 uniform they vary slightly.  
 17 Q. So it wasn't unusual that each of the  
 18 letters weren't exactly the same?  
 19 A. Not unusual at all.  
 20 Q. The date of this closing service letter  
 21 is October 30, 1996. And as we've seen from  
 22 Commonwealth Exhibit 8, the deed -- G.J.L. did not  
 23 obtain title until December 16 of 1996. Did the  
 24 issuance of this letter, the closing letter, before  
 25 the acquisition of the property by G.J.L. create any

Page 236

1 problems?  
 2 MR. KOTT: Object to form.  
 3 MS. ELGART: Objection.  
 4 MR. McGOWAN: You can answer.  
 5 A. No, not at all.  
 6 Q. Because this is insuring the lender  
 7 against, as you said before, the malfeasance of the  
 8 closing attorney?  
 9 MR. KOTT: Object to form.  
 10 MS. ELGART: Objection.  
 11 MR. McGOWAN: You can answer.  
 12 A. Yes.  
 13 Q. If you will skip ahead to exhibit  
 14 Commonwealth 15. This -- I'll represent to you it's  
 15 a printout from Mr. Yacker's trust account, which was  
 16 kept manually but subsequently digitalized by the  
 17 federal government. And so -- actually if you go to  
 18 the last page of the exhibit, which is Bates stamp  
 19 7084, you will see the handwritten --  
 20 A. I see it.  
 21 Q. And then if you can take a look on the  
 22 third page, which is 7083, and look on the second  
 23 entry under 138 Ridge Avenue, it's the GL account.  
 24 ID is 26050. Do you see that where it says "title  
 25 fees"?

Page 237

1 A. Yes.  
 2 Q. And so that's a payment to Coastal Title  
 3 of \$1,113 for -- actually I guess pursuant to the  
 4 invoice that we showed you as one of the prior  
 5 exhibits?  
 6 A. Yes.  
 7 Q. And then if you look down there's  
 8 another payment. It's under that GL account on D  
 9 column, it's the fifth line down. It's number 2625  
 10 and it says, Monmouth County Clerk, Bustos Junior,  
 11 and it says, 707.50. Do you know what that payment  
 12 would be for?  
 13 A. RTF is realty transfer fees.  
 14 Q. So that was the recording --  
 15 A. No, the realty transfer tax.  
 16 Q. The tax. Okay.  
 17 A. The next line is recording fees.  
 18 Q. The line that says --  
 19 A. 26250.  
 20 Q. The \$81?  
 21 A. Correct.  
 22 Q. And then if you take a look underneath  
 23 each of those lines there's a cancellation, a voiding  
 24 of the check, the realty transfer fee, of 707.50 and  
 25 then a check voiding of the \$81 of recording fees.

25 (Pages 234 to 237)

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Page 238

1 And so do you know why Mr. Yacker would void the  
 2 checks for the transfer fees and the recording fees?  
 3 MS. ELGART: Objection as to form.  
 4 A. I could only guess.  
 5 Q. And you don't know -- do you recall  
 6 having any discussions about Mr. Yacker about why he  
 7 wasn't filing the deeds?  
 8 A. No. I tried to. He just avoided me.  
 9 Q. Did you have any discussions with Mr.  
 10 Pepsny or Mr. Kane that Yacker had cut checks but  
 11 then cancelled or voided them and that's why -- and  
 12 never filed the deeds?  
 13 A. No, and until I saw this I never knew  
 14 that he was voiding deeds -- or checks, excuse me.  
 15 Q. Voiding the checks for the filing.  
 16 A. Yeah, I had no idea that was happening.  
 17 MR. MCGOWAN: You thought he wasn't  
 18 writing them in the first place?  
 19 THE WITNESS: Yes, that's what I  
 20 thought.  
 21 Q. It's an odd -- you agree it's an odd  
 22 thing to do?  
 23 A. Very.  
 24 Q. At the closing you prepared the checks  
 25 for everybody. He clearly sent you the check, he

Page 239

1 sent money to Mr. Kane and Mr. Pepsny, and for some  
 2 reason all of these transfer and recording checks are  
 3 voided.  
 4 A. Yes.  
 5 Q. But you never had any discussions with  
 6 anybody about it back then?  
 7 A. No, no, this is the first time I've seen  
 8 that checks were ever even written.  
 9 Q. Can you take a look at -- on 7084, that  
 10 line nine is the payment to Coastal for the title  
 11 insurance, the searches and the closing protection  
 12 letter, 1,113.  
 13 A. Correct.  
 14 Q. For some reason he's also listed the  
 15 realty transfer fee and the recording fees?  
 16 A. Right.  
 17 Q. And then -- okay. If you can take a  
 18 look at Exhibit 14, that again -- that's actually  
 19 from your -- Coastal's records, the check from Mr.  
 20 Yacker for the \$1,113. Did Coastal retain copies of  
 21 all of the payment checks it received?  
 22 A. It was normal practice, yes.  
 23 Q. Where were these checks kept?  
 24 A. This would have been in the file.  
 25 Q. In the file with everything?

Page 240

1 A. Yes.  
 2 Q. Okay. You didn't keep them in some  
 3 other file that you had copied?  
 4 A. No.  
 5 Q. So this was just part of the files you  
 6 had copied?  
 7 A. Correct.  
 8 Q. And then if you take a look at what we  
 9 had marked as Commonwealth 16, which was produced  
 10 from Coastal's files, and it's Bates stamped CTB 1234  
 11 and just tell me what that is.  
 12 A. That's our file copy of the summary of  
 13 the transaction. It just tells what is happening.  
 14 It's an order for Stanley Yacker, owners and  
 15 mortgage, purchase price, mortgage amount, the  
 16 seller's name, buyer's name, the lender and then the  
 17 property location.  
 18 Q. And where was this document maintained?  
 19 A. This was in the file. This would be the  
 20 first piece of paper that we generate on an order.  
 21 Q. So was this the cover page?  
 22 A. This would be at the bottom.  
 23 Q. And then if you can go to Commonwealth  
 24 Exhibit 17.  
 25 A. Yes.

Page 241

1 Q. On the first page of Exhibit 17 it says  
 2 under B, "Conditions to be satisfied prior to  
 3 disbursement of loan proceeds," and it says, "All  
 4 liens, judgments, mortgages must be satisfied at  
 5 closing." How would the lender know what liens,  
 6 judgments and mortgages to be satisfied at closing  
 7 there were?  
 8 A. Through the title commitment.  
 9 Q. Okay. And who would do the -- these  
 10 were instructions to the closing attorney?  
 11 A. Right.  
 12 Q. So this was -- these are instructions  
 13 from Walsh Securities to Mr. Yacker to complete these  
 14 requirements before he disbursed the funds?  
 15 A. Right.  
 16 Q. Do you understand that Walsh Securities  
 17 was table funding these loans?  
 18 A. I don't know what that is.  
 19 Q. That they were -- even though the loans  
 20 were brokered by National Home Funding who dealt with  
 21 the individual and got all the privacy statement and  
 22 things like that, the money was actually wired  
 23 directly by Walsh Securities to the closing attorney  
 24 at the closing table?  
 25 A. No, I wasn't aware of that.

26 (Pages 238 to 241)

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<p style="text-align: right;">Page 242</p> <p>1 Q. On liens, judgments and mortgages to be 2 satisfied, if they're not listed on the title 3 commitment how would the lender know what was 4 necessary to be satisfied? 5 A. I don't think they would know. 6 Q. So the -- that double commitment, if the 7 lender only saw the title commitment for the sale of 8 the property and not the purchase, it wouldn't know 9 what issues were outstanding related to the property? 10 A. Not if they didn't see that first 11 commitment. 12 Q. The first commitment. And then, 13 Mr. Agel, on the third page of that, which is 47746, 14 is a -- the settlement agent is listed as Stanley 15 Yacker. And this shows how the payment is being 16 applied. Would you ever get a copy of this sheet? 17 A. No, we never did, not on these. 18 Q. How about the closing instructions? 19 A. No. 20 Q. Did you ever get a copy of that? 21 A. No. 22 Q. Do you get them on other transactions? 23 A. Sometimes. 24 Q. Is there any rhyme or reason why you get 25 some and not others?</p>	<p style="text-align: right;">Page 244</p> <p>1 judgment G.J.L. is no longer in possession of the 2 property? 3 MR. McGOWAN: There's a difference 4 between ownership and possession. 5 A. They no longer own it. 6 Q. They no longer own it so it's now owned 7 by the city of Asbury Park? 8 A. As of August 23, 2002 it was, yes. 9 Q. And then Asbury Park is free to sell it? 10 A. Yes. 11 Q. Do you know why -- because we have these 12 deeds from G.J.L. to Mr. Bustos. Do you know why Mr. 13 Bustos is not listed as the owner on last tax 14 duplicate or last owner I guess is a simpler way of 15 saying it? 16 A. Because his deed wasn't recorded. 17 Q. Okay. The deed from G.J.L. to Bustos? 18 A. Correct. 19 Q. Okay. And so do you know if the 20 mortgage was ever recorded from Walsh Securities to 21 Mr. Bustos? 22 A. I doubt it. I don't know but I would 23 doubt it. 24 Q. But if the deed was never recorded from 25 G.J.L. to Mr. Bustos there was no way for Walsh</p>
<p style="text-align: right;">Page 243</p> <p>1 A. We're not the settlement agent. They 2 generally only go to the settlement agent. 3 Q. So if you were doing the closing -- 4 A. Then we will get the closing 5 instructions, yeah. 6 Q. And then -- but otherwise in the normal 7 course you don't receive them from the closing 8 attorney? 9 A. Very rarely. 10 Q. Okay. Why do you receive them? 11 A. Generally on commercial transactions. 12 Q. Okay. And then if you can go to what's 13 been marked as Commonwealth 18, which as I said is a 14 printout from the county website showing that 138 15 Ridge Avenue was actually -- remained in G.J.L. 16 Limited's name and was sold in a tax sale on and 17 final judgment entered July 31 of 2002. Are you 18 familiar with tax sales? 19 A. Yes. 20 Q. And then is this document -- I don't 21 want to say standard, but this is the document that's 22 entered showing that the tax sale has been concluded. 23 A. Yes, the final judgment and the tax -- 24 foreclosure, excuse me. 25 Q. And so as a result of this final</p>	<p style="text-align: right;">Page 245</p> <p>1 Securities to foreclose on this property? 2 MR. KOTT: Can I have that question back 3 again. 4 (The pending question is read by the 5 court reporter.) 6 A. No, that's not the case. Many of these 7 mortgages were foreclosed and properties sold. What 8 they did, and it happens a lot, not just Asbury Park 9 and Cristo Property. If the documents aren't 10 recorded, then the bank brings an action and asks to 11 have a lien placed on the property as part of their 12 foreclosure. They can do that and they have done it. 13 I have insured probably dozens of properties that 14 that's happened on. 15 Q. Do you know if that happened on the 16 Cristo -- 17 A. It did happen on some, I know that, yes. 18 Q. Who was the -- do you know who got the 19 lien? 20 A. Various lenders. Some were Cityscape, 21 some were Banker's Trust. Those are the only ones I 22 recall at this point but there might be others, but 23 those are the only ones that I have seen were 24 Cityscape and Banker's Trust. 25 Q. Were you involved in that at all?</p>

27 (Pages 242 to 245)

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212-267-6868

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3e478b50-37d1-4229-9354-18292c3c480e



Page 246

1 A. No, just insuring sales of them out of  
 2 the bank. Say if the bank -- after the bank  
 3 completed the foreclosure.  
 4 Q. And obtained title?  
 5 A. Right. They would then sell the  
 6 property and I happen to do a big foreclosure  
 7 business so we would just insure the sales out.  
 8 Q. Out of the entity who obtained title?  
 9 A. Yes.  
 10 Q. Going back to the closing instructions,  
 11 Exhibit 17, is there an industry standard for closing  
 12 instructions?  
 13 MR. KOTT: Object to the form.  
 14 MS. ELGART: Objection.  
 15 MR. McGOWAN: As do I. This man is here  
 16 as a corporate -- representative of a corporation,  
 17 he's not here as an expert witness. But he can  
 18 answer the question.  
 19 Q. Or are there essential elements to  
 20 closing instructions?  
 21 MR. KOTT: Same objection.  
 22 MS. ELGART: Objection.  
 23 A. I couldn't answer that question anyway.  
 24 I just don't know.  
 25 Q. You just don't know. Okay.

Page 247

1 (A recess takes place.)  
 2 Q. A few more questions, Mr. Agel. Were  
 3 you ever contacted by any of the straw buyers of  
 4 these properties?  
 5 A. No.  
 6 Q. When we took a look at the transactions  
 7 that Mr. Kane's companies selling the properties  
 8 there were 51 sales between April second and June 5,  
 9 1997. Do you recall when you told either Mr. Kane,  
 10 Pepsny or I guess at that point Mr. Cicalese when you  
 11 would no longer be doing business with them?  
 12 A. It was probably sometime in June.  
 13 Probably. I think.  
 14 Q. And that's the best --  
 15 A. Best guess.  
 16 Q. -- that you have? The last couple of  
 17 questions. Last time we talked about approved  
 18 attorneys or unapproved attorneys, as you called  
 19 them, on the list. I think you had testified that if  
 20 an attorney was unapproved you could ask the title  
 21 company for an exception if you wanted to work with  
 22 them?  
 23 A. Correct.  
 24 Q. And I think you also had testified as  
 25 far as you knew neither Yacker, Cicalese, Pepsny or

Page 248

1 Alfieri were unapproved until after this whole thing  
 2 broke?  
 3 A. Correct.  
 4 Q. And then I think you said you  
 5 continued -- you had stopped doing work with Yacker  
 6 before these frauds were made public?  
 7 A. Yes.  
 8 Q. And then you -- did you do any work with  
 9 Mr. Cicalese after the frauds were made public?  
 10 A. I don't think so, no.  
 11 Q. And then I think you testified that you  
 12 did do some work with Mr. Pepsny for a while up until  
 13 the time, I think you said, you thought he left Mr.  
 14 Alfieri?  
 15 A. Yes.  
 16 Q. Okay. Which Mr. Pepsny testified  
 17 yesterday that was November of '97 he got an  
 18 opportunity to leave. Do you recall: Did you  
 19 continue to do business with Mr. Alfieri?  
 20 A. Probably for a while after that. I  
 21 don't know -- I don't recall when we stopped doing  
 22 business with Michael.  
 23 Q. Was it in the '90s or --  
 24 A. I think it was in the 2000s. I think it  
 25 was a couple of years later.

Page 249

1 Q. Do you recall if you did any business  
 2 with Mr. Pepsny after he left the firm of what was  
 3 Alfieri & Pepsny?  
 4 A. It's possible but it wasn't much. I  
 5 doubt it. It's possible but I don't think so.  
 6 Q. And then on the -- the closing  
 7 protection letters cover actions of approved  
 8 attorneys. Could Coastal suggest to the title  
 9 companies certain attorneys should be approved?  
 10 A. We could request it. You know, it's  
 11 pretty standard practice that if you're in the green  
 12 section of the Law Diary, then you're an approved  
 13 attorney.  
 14 Q. I believe that's what Miss Sullivan  
 15 testified at Commonwealth, if you had a license you  
 16 were --  
 17 A. You were approved.  
 18 Q. You were approved. Okay. I guess I  
 19 should ask the question: Back in '96, '97 was there  
 20 or did you have a definition for an approved  
 21 attorney, or was it that they were licensed and not  
 22 on the unapproved list?  
 23 A. That's correct. If you're in that green  
 24 section of the Law Diary and you're not on the  
 25 unapproved list, you're approved.

28 (Pages 246 to 249)

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212-267-6868

516-608-2400

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Page 250

1 Q. Okay. Did Coastal decide to use an  
2 attorney or did the title company, or did the  
3 attorney come to Coastal?  
4 A. I don't follow you.  
5 Q. Well, I guess part of it -- how did you  
6 get -- how did attorneys know to use Coastal Title  
7 Agency?  
8 A. I had sales reps on the road and just  
9 through reputation over the years.  
10 Q. And your sales rep would go and meet  
11 attorneys?  
12 A. Yes.  
13 Q. They advertised your services --  
14 A. Yes.  
15 Q. -- I guess. And so attorneys would call  
16 you for closings, not the other way around?  
17 A. Correct, that's right.  
18 Q. Do you know if the title companies  
19 provide any instructions or guidelines? I think you  
20 said you got these notebooks from the title companies  
21 when you were an approved agent. Do you know if the  
22 title companies provided something similar to the  
23 attorneys?  
24 A. I don't think so.  
25 Q. It was just there were many more

Page 251

1 approved attorneys than there were title agents. Is  
2 that --  
3 A. Yes.  
4 Q. Could Coastal recommend to the title  
5 companies that a certain attorney be unapproved or  
6 disapproved?  
7 A. If we had problems with an attorney we  
8 would let our underwriter know, and that it had to be  
9 big problems.  
10 Q. And then what would happen?  
11 A. I guess they would -- I don't know  
12 actually. They would do an investigation I assume  
13 and decide whether they wanted them on their approved  
14 list or not.  
15 Q. So if you had problems with an attorney  
16 and you spoke to the title company -- or the  
17 underwriters at the title companies, they could come  
18 down on the unapproved list?  
19 A. Yes.  
20 Q. And if they didn't you could still work  
21 with them?  
22 A. Correct.  
23 Q. Do you recall: Did Coastal after the  
24 frauds became public ever suggest to the title  
25 companies that -- I'll give you the list -- Mr.

Page 252

1 Yacker, Mr. Cicalese, Mr. Pepsny or Mr. Alfieri be  
2 unapproved or disapproved attorneys?  
3 A. No, I don't think we did -- no, I didn't  
4 do that.  
5 Q. Do you recall if after the frauds became  
6 public that the list you got with unapproved  
7 attorneys had any of those four on them?  
8 A. Definitely had Yacker and Cicalese. I  
9 don't recall whether Pepsny or Alfieri got on it.  
10 Q. Do you recall it being on a list from  
11 Commonwealth or Fidelity or both?  
12 A. Probably both. I don't remember.  
13 Definitely Commonwealth, I know that, but I don't  
14 know about Fidelity.  
15 Q. Okay. That's all I have.  
16 CROSS-EXAMINATION BY MR. KOTT:  
17 Q. Mr. Agel, we've met a few times  
18 informally but let me introduce myself. I'm David  
19 Kott, and I represent the defendant Commonwealth Land  
20 Title Insurance Company. Okay?  
21 A. Yes.  
22 Q. I have a very short amount of  
23 questioning for you. I want to ask you some  
24 questions about after the fraud was discovered.  
25 Okay?

Page 253

1 You said in response to one of  
2 Mr. Magnanini's questions, and this is a rough  
3 paraphrase, I just want to get you back to that  
4 subject, that a lot of these problems were taken care  
5 of or dealt with. Do you remember that testimony?  
6 A. Yes.  
7 Q. And you also talked about Cityscape and  
8 Banker's Trust and some activities that dealt with  
9 that. Do you remember that testimony?  
10 A. Yes.  
11 Q. That's what I want to ask you about.  
12 First of all, are those two things the same subject  
13 or are they different subjects?  
14 A. I think they're different subjects.  
15 Q. Explain more the first subject to us,  
16 that these things were taken care of after the frauds  
17 were discovered. What were you referring to?  
18 A. Just clearing up title objections.  
19 Q. What I want you to do is to translate --  
20 I want you to take title talk and put it into lay  
21 terms, if you could. So go ahead.  
22 A. We could be here a while. It would be  
23 paying off judgments, getting -- in the one case we  
24 had here where we wanted that recognizance  
25 discharged. That would be the case for -- like, just

29 (Pages 250 to 253)

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Page 254

1 ironically I happen to know this fellow that was the  
2 seller and he had been arrested and put his  
3 property -- it was a general recognizance so it's a  
4 lien against all of your real estate. He -- we  
5 needed that property released from the recognizance  
6 in order to insure it. There were other judgments  
7 against him, money suits where he had been sued and  
8 we needed the property released from that judgment or  
9 it would need to be paid off and discharged. Those  
10 type of things.

11 Q. Is this a situation where the closing  
12 has occurred and there's some lien on the property  
13 that has not been taken care of at the closing?

14 A. The situation we're in right now?

15 Q. No, no, what you just referred to.

16 A. No. These are situations where they  
17 probably -- not probably. Where they did clear them,  
18 they did pay things off. They just didn't get us the  
19 documentation.

20 Q. Does that include some of the liens  
21 we're talking about in this case?

22 A. Yes, it should be, yes.

23 Q. Now, the other thing, you had mentioned  
24 about Banker's Trust and Cityscape. Can you tell us  
25 in lay terms what you were talking about?

Page 256

1 first lien on the property so that they could  
2 continue on and foreclose the property, get it back  
3 ultimately on the market.

4 Q. Did that happen with a number of the  
5 loans we're talking about in this case as far as you  
6 know?

7 A. Yes. It happened with quite a few. I  
8 don't know how many. Just from one -- loans or  
9 properties that I insured when they sold after this  
10 happened.

11 Q. Now, you might not know the answer to  
12 this question but let me ask it: Cityscape and  
13 Banker's Trust in those situations I assume would  
14 have had a lawyer representing them in the mortgage  
15 foreclosure. Is that correct?

16 A. Correct.

17 Q. Do you know who hired that lawyer? And  
18 what I mean by that is: Do you know whether either  
19 Commonwealth or Fidelity or Nations hired a lawyer  
20 for Banker's Trust or for Cityscape or whether they  
21 hired their own lawyers and did it?

22 A. I don't know.

23 Q. Okay. Mechanically the closing -- do  
24 you call it closing protection letter or closing  
25 service letter?

Page 255

1 A. Yeah, in those cases they were --  
2 Cityscape and Banker's Trust were -- I assumed that  
3 they were lenders that bought these loans from Walsh  
4 Securities.

5 Q. And I will represent to you that there's  
6 been some discovery in this case indicating that  
7 those lenders did purchase some of these loans from  
8 Walsh.

9 A. Right.

10 MR. MAGNANINI: Let me just clarify the  
11 record. Cityscape was a whole loan purchased. They  
12 purchased loans. Banker's Trust was a trustee for  
13 loans that Walsh Securities securitized. So Walsh  
14 issued I think about a billion five in five different  
15 securities so they were a trustee and a purchaser.

16 Q. So go ahead.

17 A. So what would happen in those cases, and  
18 in particular probably this one right here, Bustos on  
19 138 Ridge, the deed and the mortgage into Bustos --  
20 the Bustos deed and then the Bustos mortgage were not  
21 recorded. When the loans defaulted the lender  
22 started foreclosure, discovered that the deed and  
23 mortgage were not recovered and their lien had not  
24 been properly perfected. So they made a motion to  
25 the court to have a lien -- their lien imposed as a

Page 257

1 A. Closing service letter.

2 Q. Now, I'm going to take you back and  
3 switch the time period. I'm going to take you back  
4 to the time of these loans when your company was  
5 dealing with it. What was it called then in your  
6 lingo?

7 A. Well, we would call it an AA letter, an  
8 approved attorney letter. That was just our lingo  
9 though. It became closing service letter sometime in  
10 the late -- in the late '90s. Sometime around this  
11 time.

12 Q. So closing service letter?

13 A. Yes.

14 Q. Okay. Mechanically in your office with  
15 respect to these loans, physically how did you get  
16 the closing service letters? And what I'm asking is:  
17 Did you print them off a computer? Did you print  
18 them yourself? Were they sent to you by the title  
19 insurance company?

20 A. In the beginning they would come from  
21 the title company. We would get a batch of them.  
22 They were pre-numbered and we would -- the  
23 old-fashioned way have to type the name of the  
24 attorney and then all the pertinent information.  
25 That didn't last very long. They took the control

30 (Pages 254 to 257)

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Page 258

1 numbers away probably in less than a year, and they  
2 were installed on our computer systems.

3 Q. Is that the case when we're talking  
4 about the time period here?

5 A. Yes.

6 Q. And how would they get installed in your  
7 computer system? Let me tell you what I'm driving at  
8 just so you know. In some of the loans that -- in  
9 some of the Commonwealth loans that Coastal was the  
10 agent in this time period there are different  
11 approved attorney forms. Some have one additional  
12 paragraph and others don't, and I'm trying to figure  
13 out how that would have occurred. All out of your  
14 agency.

15 A. Probably we were exhausting a supply  
16 that we already had. Or I would have to see them to  
17 tell you whether they were preprinted or they were  
18 installed in the computer. But if they were  
19 installed in the computer, those would have been  
20 forms that we got directly from either Commonwealth  
21 or Fidelity.

22 Q. But can you help us -- assume as true  
23 just for my question, just assume it is true that in  
24 this time period there are different forms for the  
25 Commonwealth letters.

Page 260

1 would you still use the old form?

2 A. We could have and it could have been by  
3 mistake, that's possible.

4 Q. Let me call your attention to exhibit  
5 Commonwealth 6(A) from the March -- sorry, May 27,  
6 2010 deposition of a representative of Commonwealth  
7 who was Donna Sullivan and it's Bates stamped WSWT  
8 000505. It's a two-page document.

9 Can you tell whether that one was off  
10 the computer or whether that was one of the --

11 A. This is off the computer definitely.

12 Q. And how would they get on your computer?  
13 That is, how would this form get on your computer?

14 That is, did it go directly from a Commonwealth  
15 computer to you or how did that work?

16 A. No. It would have been coming in  
17 through our software -- we all use approved software  
18 providers for the title industry and it would have  
19 come from that provider. They all have agreements  
20 with the underwriters as to the use and installation  
21 of their forms.

22 Q. Again, even though I represent  
23 Commonwealth this is not something I know. Does  
24 Commonwealth hire somebody to give you software?

25 A. No.

Page 259

1 A. Right.

2 Q. And I was trying to figure out how that  
3 would happen.

4 MR. MAGNANINI: David, are you saying  
5 different forms within Commonwealths forms, within  
6 Commonwealth letters themselves?

7 Q. If we look at the Commonwealth in this  
8 case -- and by Commonwealth, the ones you would have  
9 issued letters under Commonwealth's name.

10 A. Right.

11 Q. There's different forms, and one of the  
12 differences is one of the forms has an extra  
13 paragraph that the others did not and that's -- I was  
14 trying to see if you could help me with how that  
15 could occur.

16 A. It could have happened. I need to see  
17 those letters in order to give you a good answer, but  
18 my guess is is that the ones that had the extra  
19 paragraph or didn't, whichever, one of them -- one  
20 was a form that was a preprinted form that we would  
21 have to fill in information on it in the typewriter.  
22 The other one was in the computer. So when -- we  
23 would exhaust all of our forms, the preprinted forms  
24 that they gave us.

25 Q. Even if they had issued a new form,

Page 261

1 Q. How does that work?

2 A. What they do is they have -- I guess  
3 they would have -- my provider right now I'll use an  
4 example. Title Support Software, TSS. They have I  
5 guess licensing agreements with Commonwealth and all  
6 the other companies to sell their -- not sell but to  
7 install their forms. They have written a package, a  
8 software package specific to title insurance. They  
9 need those forms from the various underwriters in  
10 order to install.

11 So what they do between Commonwealth and  
12 TSS I don't know. All I know is that TSS and every  
13 other provider I have had since we had computers  
14 would come and install that package which includes  
15 the closing service letter.

16 Q. Was TSS your service provider back at  
17 the time --

18 A. No.

19 Q. -- you were involved with these loans?

20 A. No.

21 Q. Did you have a service provider at the  
22 time you had these loans?

23 A. Yes.

24 Q. Did it operate essentially the way you  
25 just described TSS's operation with you?

31 (Pages 258 to 261)

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<p style="text-align: right;">Page 262</p> <p>1 A. Yes.</p> <p>2 Q. And do you know the mechanics of how TSS</p> <p>3 would get the Commonwealth documents?</p> <p>4 A. No.</p> <p>5 Q. I have one more subject for you, and</p> <p>6 again I'm going to paraphrase just to get you back</p> <p>7 there. You said -- and this is my use of the term.</p> <p>8 You said if there was a break in the title you would</p> <p>9 not insure the title. And I realize "break in the</p> <p>10 title" may not be the right word but you know what</p> <p>11 I'm referring to?</p> <p>12 A. Yes.</p> <p>13 Q. Could you explain that to us in lay</p> <p>14 terms?</p> <p>15 A. That would be where there would be the</p> <p>16 case here where the deed into G.J.L., the seller, was</p> <p>17 not recorded, something like that. Just using it in</p> <p>18 these terms, it's dealing where they ended up</p> <p>19 closing -- selling properties before they bought</p> <p>20 them. That would be -- it was a good term, a break</p> <p>21 in the chain of title.</p> <p>22 Q. And in that situation, if I understand</p> <p>23 your testimony, you would have been paid but you</p> <p>24 would have transmitted that to the underwriter</p> <p>25 anyway?</p>	<p style="text-align: right;">Page 264</p> <p>1 Q. When you sent the policy to the lawyer,</p> <p>2 would the lawyer be able to take action that would</p> <p>3 end up with that exception being removed?</p> <p>4 A. Yes.</p> <p>5 Q. How would the lawyer do that?</p> <p>6 A. You would record the deed in this case.</p> <p>7 That would be the proper -- record the deed and then</p> <p>8 possibly get a corrective deed from G.J.L. into</p> <p>9 Bustos and then record or rerecord the deed and</p> <p>10 rerecord the mortgage so that there would be proper</p> <p>11 sequence.</p> <p>12 Q. Full circle from where I started. After</p> <p>13 these frauds became public when you talked about</p> <p>14 Cityscape and you talked about Banker's Trust, do you</p> <p>15 know whether some unrecorded earlier deeds were</p> <p>16 recorded during the foreclosure process? That is,</p> <p>17 somebody chased them down and got them recorded?</p> <p>18 A. I do believe so, yes.</p> <p>19 Q. To solve that problem. Right?</p> <p>20 A. Yes.</p> <p>21 Q. Thank you. I don't have any further</p> <p>22 questions.</p> <p>23 MS. ELGART: I have no questions.</p> <p>24 REDIRECT EXAMINATION BY MR. MAGNANINI:</p> <p>25 Q. Just to follow up then. What happened</p>
<p style="text-align: right;">Page 263</p> <p>1 A. Yes.</p> <p>2 Q. And the reason you would have</p> <p>3 transmitted it to the underwriter anyway was the</p> <p>4 assumption based on your many years in the industry</p> <p>5 that that problem would be cured and then ultimately</p> <p>6 a policy would be issued?</p> <p>7 A. Yes. It would either be cured or I</p> <p>8 would put it in as an exception.</p> <p>9 Q. Right. And to the extent they were not</p> <p>10 cured in this case, was that because this fraud</p> <p>11 became public and everything blew up?</p> <p>12 A. Correct.</p> <p>13 Q. When you say you would have put it in</p> <p>14 with an exception, what do you mean by that?</p> <p>15 A. In this case -- in G.J.L. we would have</p> <p>16 put into the owner's policy, possibly the loan</p> <p>17 policy, I don't know if we would have put it in the</p> <p>18 loan because of the closing service letter, but we</p> <p>19 would have put: Subject to the outstanding interest</p> <p>20 of G.J.L. Limited and said that because of a lack of</p> <p>21 a deed from G.J.L. into Bustos.</p> <p>22 Q. And if -- withdrawn. When you sent that</p> <p>23 to your client -- here would your client be the</p> <p>24 lawyer?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 265</p> <p>1 when the form of the closing service letter changed,</p> <p>2 the title company changed the form? The title</p> <p>3 companies would provide it to your software provider?</p> <p>4 A. Yes.</p> <p>5 Q. And then were you instructed -- was</p> <p>6 Coastal Title instructed to destroy old versions,</p> <p>7 delete old versions?</p> <p>8 A. Yeah. You would either -- we are</p> <p>9 getting again above my pay grade but it's -- we would</p> <p>10 get a disk or a -- today we download them over the</p> <p>11 Internet, which is still something I don't know</p> <p>12 about, but we would then put the disk in and it would</p> <p>13 do whatever it did. It would modify the forms or it</p> <p>14 would delete, whatever it did, I don't know exactly</p> <p>15 what it did.</p> <p>16 Q. The reason I was following up, Mr. Agel,</p> <p>17 is you said you thought you could have issued some</p> <p>18 closing service letters in a different format by</p> <p>19 mistake.</p> <p>20 A. Yes.</p> <p>21 Q. And I would have thought that if the</p> <p>22 title company had given you new ones you would have</p> <p>23 just discarded the old ones and gone from there.</p> <p>24 A. No. They made sure -- especially if you</p> <p>25 take a look at this one it has an audit number on it.</p>

32 (Pages 262 to 265)

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<p style="text-align: right;">Page 266</p> <p>1 Q. 6(A)?</p> <p>2 A. Yes.</p> <p>3 Q. Where is the audit number?</p> <p>4 A. Top right. We had to account for this.</p> <p>5 Q. And is this one of the examples that --</p> <p>6 with the audit number that came preprinted?</p> <p>7 A. No, this is not preprinted.</p> <p>8 Q. So your computer would generate a</p> <p>9 different audit number for each CSL?</p> <p>10 A. Yes.</p> <p>11 Q. And that way the tight company knew what</p> <p>12 letters --</p> <p>13 A. That's right.</p> <p>14 Q. Okay. And one last question as a follow</p> <p>15 up to what Mr. Kott said. I think you had said you</p> <p>16 would -- you started answering his second to last</p> <p>17 question that said: We would not include it in the</p> <p>18 loan because of the CSL?</p> <p>19 A. I think I said we may not.</p> <p>20 Q. What did you mean by that in lay</p> <p>21 people's terms?</p> <p>22 A. If it was an exception that was related</p> <p>23 to the attorney's work but the attorney did something</p> <p>24 wrong, in this case record the deed, we may not be --</p> <p>25 I would try to put it in the mortgage policy. I</p>	<p style="text-align: right;">Page 268</p> <p>1 (The deposition is concluded at 3:42</p> <p>2 p.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6 _____</p> <p>7 ROBERT AGEL</p> <p>8 Subscribed and sworn to before me</p> <p>9 this _____ day of _____, 2010.</p> <p>10 _____</p> <p>11 Notary Public</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 267</p> <p>1 would put it in and if asked to omit it, we would</p> <p>2 have to get clearance -- I would have to get</p> <p>3 clearance from the underwriter.</p> <p>4 Q. Because it concerned a mistake by the</p> <p>5 closing attorney?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. I think that's all I have.</p> <p>8 RECROSS EXAMINATION BY MR. KOTT:</p> <p>9 Q. Are you an attorney?</p> <p>10 A. No.</p> <p>11 Q. Are you familiar with all of the New</p> <p>12 Jersey cases that interpret closing service letters?</p> <p>13 A. No.</p> <p>14 Q. So when you say -- when you said, and I</p> <p>15 am going to paraphrase, if it was a mistake of an</p> <p>16 attorney then it would be under the closing service</p> <p>17 letter, do you know whether all mistakes of attorneys</p> <p>18 are covered by the closing service letter or just</p> <p>19 certain types of mistakes?</p> <p>20 A. I don't know.</p> <p>21 Q. As to what the closing service letter</p> <p>22 actually covers, that you would leave to judges and</p> <p>23 lawyers?</p> <p>24 A. Yes.</p> <p>25 Q. Thank you. I have no further questions.</p>	<p style="text-align: right;">Page 269</p> <p>1 CERTIFICATE.</p> <p>2</p> <p>3 I, JANET BAILYN, a Notary Public and</p> <p>4 Certified Court Reporter of the State of New Jersey,</p> <p>5 do hereby certify that prior to the commencement of</p> <p>6 the examination ROBERT AGEL was duly sworn by me to</p> <p>7 testify the truth, the whole truth and nothing but</p> <p>8 the truth.</p> <p>9 I DO FURTHER CERTIFY that the foregoing</p> <p>10 is a true and accurate transcript of the testimony as</p> <p>11 taken stenographically by and before me at the time,</p> <p>12 place and on the date hereinbefore set forth.</p> <p>13 I DO FURTHER CERTIFY that I am neither a</p> <p>14 relative nor employee nor attorney nor counsel of any</p> <p>15 of the parties to this action, and that I am neither</p> <p>16 a relative nor employee of such attorney or counsel,</p> <p>17 and that I am not financially interested in the</p> <p>18 action.</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public of the State of New Jersey</p> <p>22 My commission expires February 3, 2013</p> <p>23 License No. XI00970</p> <p>24</p> <p>25 Date: August 9, 2010</p>

33 (Pages 266 to 269)

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212-267-6868

516-608-2400

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<b>A</b>				
AA 257:7	217:16 220:9	229:9,19 231:20	158:8 189:15	230:7,18 232:1,2
Aaron 193:21	227:3 231:4	232:18 234:17	217:25 234:6	236:8 241:10,23
able 224:12 227:25	242:13 247:2	235:13 236:4,11	244:7,9 245:8	243:8 247:20
264:2	252:17 265:16	246:18,23 256:11	asked 146:6 147:3	249:13,21 250:2,3
above-entitled	268:6 269:6	259:17	147:19 152:20	251:5,7,15 257:8
142:2	agency 141:17	answered 145:11	159:16 180:20	257:24 258:11
account 157:8	143:13 151:22	185:15	185:15 233:5,5	266:23 267:5,9,16
160:4 161:21,22	156:23 157:1,5,18	answering 266:16	267:1	269:14,16
187:12,15 224:9	158:2,12 187:11	ANTHONY 141:13	asking 148:16	attorneys 143:5,9
236:15,23 237:8	187:15 219:2	141:14	155:11 170:3	143:12,17 148:18
266:4	234:5 250:7	anybody 148:2	185:5 214:14,24	181:2 186:17
accounts 170:19	258:14	175:10 181:8	257:16	187:18 216:5
187:5 189:2	agent 152:4 179:6	239:6	asks 245:10	247:18,18 249:8,9
accurate 269:10	179:10 191:11	anymore 146:22	assessor 206:2	250:6,11,15,23
acquire 163:23	242:14 243:1,2	177:21	209:1,17	251:1 252:2,7
acquired 155:5	250:21 258:10	anyway 246:23	Assets 141:8,9	267:17
220:20	agents 251:1	262:25 263:3	147:11 205:14	attorney's 163:11
acquires 170:3	ago 190:2 225:23	apart 215:3	218:8	193:17 266:23
acquiring 211:23	agree 238:21	apparently 167:18	assign 162:9	audit 265:25 266:3
acquisition 151:12	agreements 260:19	204:5 211:7	assigned 213:23	266:6,9
235:25	261:5	appears 159:13	assigns 219:10	August 142:7 196:4
action 141:2 212:16	ahead 145:16	application 153:18	assume 150:13	196:5,6 207:20
245:10 264:2	185:16 230:24	153:23 170:25	158:17 159:3	244:8 269:22
269:15,18	236:13 253:21	applied 242:16	161:2 164:2 166:4	authorized 145:25
actions 151:25	255:16	approved 151:11	180:25 193:5	227:8
163:9,11 249:7	Alan 191:12	247:17 249:7,9,12	202:5 227:12,18	automatically
activities 253:8	Alfieri 141:13	249:17,18,20,25	231:25 251:12	200:11
actual 160:25 163:2	149:16,17 220:16	250:21 251:1,13	256:13 258:22,23	available 145:24
171:6 187:10	248:1,14,19 249:3	257:8 258:11	assumed 255:2	Avenue 150:19
add 145:12	252:1,9	260:17	assuming 164:5	152:5 156:20,24
additional 231:8	Alfieri's 150:9	April 147:6 156:3	assumption 263:4	157:2,15,19 158:3
258:11	204:16	157:1 160:20	assurance 167:17	158:8,19,24
advertised 250:13	Alphonse 205:10	168:12 174:23	190:25	205:12 206:9,15
advice 226:1	ALTA 200:2,12	176:5,7 177:9	assurances 190:23	217:24 218:8
afternoon 145:18	227:15	185:9 186:7	attached 205:13	219:4,11 220:4
145:24	amazing 149:25	187:23 199:21	209:11 227:23	234:5 236:23
Agel 141:6 144:3	amount 157:10	206:1 209:11	attempting 168:20	243:15
145:4 146:3 150:5	161:20 223:17	223:10 232:22	attention 186:20	average 176:13,19
156:13 157:25	240:15 252:22	247:8	260:4	avoided 238:8
158:6 168:10	AMY 143:4	Arline 200:20	attorney 146:15	aware 209:15
177:22 180:14	Ann 179:24 189:1	Arnold 157:13	151:11 154:22,23	241:25
184:12 186:23,24	annotate 226:22	179:18	162:24 163:9	A-r-l-i-n-e 200:21
187:5 188:23	answer 145:12	arrested 254:2	188:8 191:12	a/k/a 141:7
193:22 194:23	159:18 181:19	Art 179:16	193:21 216:3,24	
203:17 205:7	185:4,16 211:2	Asbury 150:19	216:25 217:11	
	212:5,13 213:1	156:20 157:3,15	219:11 221:10	<b>B</b>
				B 143:14 144:7

145:1 200:1 230:10,11,14 241:2 <b>back</b> 147:6 152:12 160:19,19 163:20 168:9 170:15 173:4 174:17,22 175:6 176:4 177:5 185:8,10 188:16 198:19 201:9 216:25 230:18 233:14,15 239:6 245:2 246:10 249:19 253:3 256:2 257:2,3 261:16 262:6 <b>background</b> 189:25 <b>backlog</b> 160:15 <b>BAILYN</b> 142:3 269:3 <b>Bangs</b> 150:19 152:5 <b>bank</b> 187:22 245:10 246:2,2,2 <b>Banker's</b> 245:21,24 253:8 254:24 255:2,12 256:13 256:20 264:14 <b>bankruptcy</b> 169:8 169:9 <b>based</b> 158:17 176:2 176:9 186:4 189:2 263:4 <b>basic</b> 161:12 217:6 <b>basically</b> 152:17 <b>basis</b> 183:16 228:24 <b>batch</b> 224:4,5,17,19 224:21,23 225:8 257:21 <b>Bates</b> 152:22 156:16,22 157:5 157:11,16 204:1 205:18,24 206:5 207:14 218:5,13 218:17,22 219:5 219:16,20,25	234:20 236:18 240:10 260:7 <b>beg</b> 222:4 <b>beginning</b> 145:19 160:20 173:18 175:3 178:18 257:20 <b>begun</b> 204:17 <b>behalf</b> 162:7 175:20 183:4 188:1 <b>believe</b> 180:16 194:25 206:7 220:4 249:14 264:18 <b>best</b> 247:14,15 <b>bet</b> 160:19 <b>BETTER</b> 141:19 <b>Betty</b> 179:24 189:1 <b>beyond</b> 206:14 223:19 229:24 <b>big</b> 174:15 228:19 246:6 251:9 <b>billion</b> 255:14 <b>bills</b> 221:17 <b>binder</b> 204:22 <b>Binders</b> 203:22 <b>Bizarre</b> 151:8 <b>blank</b> 201:17,17 <b>blanks</b> 226:24,25 <b>blew</b> 225:2 263:11 <b>Bob</b> 179:20 <b>book</b> 196:17,17 199:15 <b>books</b> 196:25 197:2 <b>bottom</b> 149:18 187:21 196:19 199:11 207:18 227:7 234:21 240:22 <b>bought</b> 166:1,20 173:20 255:3 262:19 <b>bound</b> 162:23 <b>box</b> 143:11,15 200:4	<b>boxes</b> 200:2 <b>Branch</b> 205:13,25 <b>break</b> 203:15 262:8 262:9,20 <b>bring</b> 149:18 185:20 <b>brings</b> 245:10 <b>BRODO</b> 141:12 <b>broke</b> 172:5 177:24 184:12 192:5 248:2 <b>brokered</b> 241:20 <b>BROWN</b> 141:12 <b>business</b> 158:12 176:17 184:7 186:20 190:10 225:3 234:8 246:7 247:11 248:19,22 249:1 <b>Bustos</b> 218:4,7,9,25 223:15 226:13 228:17,17 229:14 229:15 237:10 244:12,13,17,21 244:25 255:18,19 255:20,20 263:21 264:9 <b>buy</b> 168:1 <b>buyer</b> 147:8 149:14 151:2,14 152:4 165:22 166:12 167:8 232:3 233:20 <b>buyers</b> 149:11,20 150:21 233:20 247:3 <b>buyer's</b> 232:1 240:16 <b>buying</b> 164:9 166:18 175:23 228:15 <b>buys</b> 163:24	<b>CALIENDO</b> 142:5 <b>call</b> 147:7 167:11 250:15 256:24 257:7 260:4 <b>called</b> 167:10 170:5 174:25 230:1 232:12 233:5 247:18 257:5 <b>calling</b> 183:18 205:15 218:7 <b>cancellation</b> 237:23 <b>cancelled</b> 238:11 <b>capital</b> 141:8,9 147:11 148:24 197:11 205:14 218:8 <b>carbon</b> 192:25 <b>care</b> 253:4,16 254:13 <b>carrier</b> 183:1 <b>case</b> 145:9 161:12 163:17 164:2 168:21 171:5,21 173:19 182:25 196:13 213:9 230:12 233:13 245:6 253:23,25 254:21 255:6 256:5 258:3 259:8 262:16 263:10,15 264:6 266:24 <b>cases</b> 162:22,22,22 173:11 255:1,17 267:12 <b>ceased</b> 184:7 <b>Center</b> 143:7 <b>cents</b> 157:10 <b>certain</b> 147:2 167:10 171:5,12 192:4 193:8 249:9 251:5 267:19 <b>certainly</b> 162:20 <b>certificate</b> 169:12 269:1 <b>Certified</b> 142:3 269:4	<b>certify</b> 269:5,9,13 <b>chain</b> 262:21 <b>chance</b> 145:7 220:11 228:9 <b>change</b> 145:10,12 176:15 <b>changed</b> 167:21 265:1,2 <b>charge</b> 217:6 225:25 <b>charged</b> 161:11 <b>charges</b> 189:3 221:3 <b>chased</b> 264:17 <b>check</b> 144:11,13 156:7 157:7 160:3 161:1,17 186:24 187:3,7,10,14,22 187:25 188:3,7 219:21 237:24,25 238:25 239:19 <b>checked</b> 197:2 200:3,4 <b>checks</b> 196:8,24 238:2,10,14,15,24 239:2,8,21,23 <b>Chelsea</b> 205:12 206:9,15 209:25 213:10 <b>choose</b> 200:11 <b>Christine</b> 158:3 169:21 171:11 <b>Cicalese</b> 141:14 151:1 154:24 155:16 187:21 188:1 190:11,14 204:18,20 225:6,7 247:10,25 248:9 252:1,8 <b>circle</b> 264:12 <b>circled</b> 149:17 <b>cited</b> 188:25 <b>city</b> 205:25 244:7 <b>Cityscape</b> 245:20 245:24 253:7 254:24 255:2,11
--	---	--	--	---



256:12,20 264:14 <b>Civil</b> 141:2 <b>claim</b> 181:12,17,20 182:1 211:11 212:12 <b>claims</b> 180:15,24 182:16 229:23 <b>clarify</b> 255:10 <b>Claudia</b> 157:14 <b>clean</b> 153:12,13 154:15,18 155:16 162:24 166:12 201:10 <b>cleaned</b> 155:12 211:15 <b>cleaning</b> 163:13 <b>cleanup</b> 154:21 <b>clear</b> 146:14 168:20 169:19 216:19 254:17 <b>clearance</b> 267:2,3 <b>cleared</b> 166:10 170:17 214:24,25 215:8,8,15 216:10 <b>clearing</b> 215:5 253:18 <b>clearly</b> 238:25 <b>clerk</b> 206:7 208:12 210:13 237:10 <b>Clerk's</b> 207:22 210:19 <b>client</b> 263:23,23 <b>clients</b> 202:9 <b>close</b> 170:6,24 <b>closed</b> 171:13 176:3 223:25 <b>closing</b> 150:10 151:9,20 152:4,7 152:14 153:4 154:22,22 155:2 156:19 163:6,9,19 164:8 165:5,21 166:18 167:7 170:2 172:21 173:17 176:10 179:6 188:8,9	197:5 212:15,16 212:23 213:14,16 216:23,23 217:4 217:10 219:3,8 220:1 221:19,25 226:3 229:13 230:7,18 232:3 234:14,18 235:3,9 235:20,24 236:8 238:24 239:11 241:5,6,10,23,24 242:18 243:3,4,7 246:10,11,20 249:6 254:11,13 256:23,24,24 257:1,9,12,16 261:15 262:19 263:18 265:1,18 267:5,12,16,18,21 <b>closings</b> 176:4 177:3,3 185:10 186:10,14 250:16 <b>Coastal</b> 141:17 143:13 147:4 149:17 150:13,22 151:21,22 152:8 152:21 155:10,15 156:14,16,18,21 156:23,25 157:1,4 157:9,18 158:1,2 158:11 160:4 162:5,6,8 168:11 168:24 169:16 170:11,15,23 172:7 173:16 174:1,6 175:19 181:5,25 182:5,13 182:14 183:7,12 184:7,13 185:9,20 185:21 186:5 187:10,14,17 188:6,17 194:3,17 195:10 197:8 199:20 208:24 209:3 213:14 218:12,13,14,17	218:22,25 219:1,4 219:21 221:24 224:20,22,24 234:4 237:2 239:10,20 249:8 250:1,3,6 251:4 251:23 258:9 265:6 <b>Coastal's</b> 157:11,16 169:2 180:14 181:12 183:4 193:22 194:10 218:1,5 219:23 223:2 239:19 240:10 <b>Coastal-10</b> 144:10 156:5 <b>Coastal-11</b> 144:11 156:7 <b>Coastal-12</b> 144:11 156:9 <b>Coastal-13</b> 144:12 156:11 <b>Coastal-14</b> 144:12 157:23 <b>Coastal-15</b> 144:13 187:3 <b>Coastal-7</b> 144:9 155:24 <b>Coastal-8</b> 144:9 156:1 <b>Coastal-9</b> 144:10 156:3 <b>Cohen</b> 179:18 <b>coherent</b> 145:16 <b>color</b> 211:10 <b>column</b> 237:9 <b>come</b> 145:21 166:2 174:23 180:7 225:6 250:3 251:17 257:20 260:19 261:14 <b>comes</b> 181:13 216:6 <b>coming</b> 149:23 260:16 <b>commencement</b>	269:5 <b>commencing</b> 142:7 <b>commercial</b> 200:12 200:13,14 243:11 <b>commission</b> 269:21 <b>commitment</b> 148:24 153:10,12 153:17 154:7,11 154:13,19 158:23 159:18 164:3,4,6 165:16 166:9,12 166:13 173:15 174:13 197:4,16 198:4,5,14,24 200:6,22 201:6,12 204:10 218:19,20 218:24 226:9,12 229:5 230:1,5,8 230:18 231:6,13 241:8 242:3,6,7 242:11,12 <b>commitments</b> 148:22 149:2,11 149:20 153:5 155:13 195:9,9 201:10 202:1 230:20 <b>commitment-wise</b> 164:1 <b>Commonwealth</b> 141:15 143:9 146:16,21,23 175:17,19,20 177:8,19 178:16 182:13,18,22 183:2,2,3,6,11,15 183:19 184:5,8 213:21 214:20 217:19,19,22 218:21,23 219:15 219:19,22,24 220:2,12 225:11 229:25 235:10,22 236:14 240:9,23 243:13 249:15 252:11,13,19	256:19 258:9,20 258:25 259:6,7,8 260:5,6,14,23,24 261:5,11 262:3 <b>Commonwealths</b> 259:5 <b>Commonwealth's</b> 217:17 259:9 <b>Commonwealth-9</b> 221:5 <b>companies</b> 151:13 152:3 154:8 161:24 162:7 173:20 174:21 175:22 176:6 180:18,22,23 181:3,19 184:14 214:9,17 215:14 216:20 247:7 249:9 250:18,20 250:22 251:5,17 251:25 261:6 265:3 <b>company</b> 143:18 147:10,12,13 148:22 149:12 162:15 163:11,22 169:22 170:2 174:25 182:1,7 188:12 215:21 217:10 218:21 235:14 247:21 250:2 251:16 252:20 257:4,19 257:21 265:2,22 266:11 <b>compilation</b> 220:10 <b>complete</b> 241:13 <b>completed</b> 246:3 <b>complied</b> 230:12 <b>compound</b> 231:19 <b>computer</b> 200:10 200:10 203:10 257:17 258:2,7,18 258:19 259:22 260:10,11,12,13
---	---	--	---	---

260:15 266:8 <b>computers</b> 261:13 <b>conceivably</b> 232:15 <b>concerned</b> 214:3 267:4 <b>concerning</b> 206:8 206:15 <b>conclude</b> 164:7 <b>concluded</b> 243:22 268:1 <b>conclusion</b> 185:4 <b>Conditions</b> 241:2 <b>conduct</b> 182:5,14 <b>conducted</b> 180:23 <b>confused</b> 175:12 199:24 217:2 <b>confusion</b> 153:9 <b>consistent</b> 194:17 <b>Construction</b> 207:20 208:18 209:13 210:17 213:12 <b>CONSULTING</b> 141:14 <b>consumer</b> 215:18 <b>contact</b> 179:5 209:3 <b>contacted</b> 179:9 182:21 185:25 189:10 190:14 209:16 247:3 <b>continuation</b> 145:20 <b>continue</b> 182:1 248:19 256:2 <b>continued</b> 171:20 204:18 248:5 <b>continuing</b> 186:23 <b>contractual</b> 181:15 <b>control</b> 180:13 257:25 <b>conversation</b> 178:23,25 233:9 233:17 <b>conversations</b> 147:2 190:19 201:9	<b>convey</b> 232:3 <b>conveyed</b> 207:19 <b>conveying</b> 218:4,7 <b>copied</b> 240:3,6 <b>copies</b> 177:16 178:12,14 188:20 208:25 211:16 221:24 223:3,5 239:20 <b>copy</b> 144:11,13 152:25 153:1,16 154:6 156:7 169:4 187:3 188:18 190:3 192:25 204:4 205:2 209:4 219:15 222:13 227:11 240:12 242:16,20 <b>corollary</b> 154:20 <b>Corp</b> 207:20 226:17 <b>corporate</b> 145:20 246:16 <b>corporation</b> 217:23 246:16 <b>correct</b> 148:10 153:1,15,17 155:8 155:14 158:13 161:21 162:1 163:4 164:17,25 169:5 173:17 180:19 184:9,11 188:14 195:11 197:12,15 198:23 200:23 202:3,7,16 213:15 215:16 220:18,22 221:7 222:8,20,25 227:2 227:13,20 228:2,5 228:7 232:6 237:21 239:13 240:7 244:18 247:23 248:3 249:23 250:17 251:22 256:15,16 263:12	<b>corrective</b> 264:8 <b>correspondence</b> 204:22 208:25 209:4 <b>costs</b> 174:14 <b>counsel</b> 145:18 181:2 183:18 209:1,3 269:14,16 <b>Countersigned</b> 227:8,16 <b>county</b> 186:7 191:19,24 198:7 198:19 206:7 207:22 210:12,18 220:5,7 222:12,20 222:23 237:10 243:14 <b>couple</b> 145:15 191:10 225:23 247:16 248:25 <b>course</b> 158:12 165:25 234:8 243:7 <b>court</b> 141:1 220:5 245:5 255:25 269:4 <b>cover</b> 160:11,12,18 161:15 171:9 185:7 186:25 196:3,6,13 202:19 209:25 230:4,24 240:21 249:7 <b>covered</b> 212:16 267:18 <b>covering</b> 195:8 <b>covers</b> 161:13 163:8,11 267:22 <b>CR</b> 195:20 196:2 <b>create</b> 235:25 <b>Cristo</b> 141:6 163:22 199:2,16 199:17 201:1,7,16 202:14,20 205:17 206:9 207:17 208:10,14,18 209:13 210:1,17	210:19,23,24 211:8 212:1 213:12 214:4 215:11 227:1 228:6,14,15,16,22 228:23,23 229:15 245:9,16 <b>CROSS</b> 144:2 <b>CROSS-EXAMI...</b> 252:16 <b>CSL</b> 266:9,18 <b>CT</b> 158:21 164:4,5 226:11 <b>CTB</b> 156:16,22 157:5,11,17 218:2 218:5,17,23 219:5 219:20,23 227:4 240:10 <b>CTC</b> 152:22 <b>CT-17767</b> 197:8 <b>cured</b> 263:5,7,10 <b>cut</b> 238:10 <b>CUZZI</b> 141:14 <b>C-1</b> 228:13 <hr/> <b>D</b> <b>D</b> 199:11 231:5 232:7 237:8 <b>DAP</b> 141:14 <b>Dash</b> 196:22 <b>date</b> 160:12 175:6 177:23 196:17 197:3,4,4,5,16 198:4,5,6,12,14 198:15,16,17,20 198:22 199:21 200:22,23 201:2 206:18 207:16 226:9 235:20 269:12,22 <b>dated</b> 144:9,9,10,10 144:12,12,13 155:24 156:1,3,5 156:11,17,23 157:1,16,18,23 158:4 164:21	165:1 168:12,24 169:25 187:22 201:17,19 203:21 205:16,18,25 206:1 207:20 217:23 218:3,10 219:2 <b>dates</b> 167:20 <b>David</b> 143:7 252:18 259:4 <b>day</b> 198:25 230:22 268:8 <b>days</b> 198:19 <b>deal</b> 179:7 190:22 191:1 <b>dealing</b> 257:5 262:18 <b>dealt</b> 241:20 253:5 253:8 <b>debts</b> 221:22 <b>December</b> 165:2,6 166:4 217:23 218:3 220:20,25 223:8 226:18 235:23 <b>decide</b> 250:1 251:13 <b>deed</b> 144:11 147:8 148:8 156:9 157:13 163:20 164:13,14,18,19 164:21,22 165:10 171:22 172:2,16 172:18 196:16 199:7,12,16,18 201:18,20,22 202:1,10,13 203:1 205:13,15,17 207:1,3,16,20,25 208:4,9 210:1,16 210:19,22,24 211:7,12,25 212:20 213:11 214:2 215:10 217:22 218:1,2,6 218:12 220:15,19
---	---	---	---	---

221:5 222:19,22 223:2,14 225:12 225:16,24 226:5 226:17 228:4,6,14 231:21,22 232:12 232:13 233:7,7 235:22 244:16,17 244:24 255:19,20 255:22 262:16 263:21 264:6,7,8 264:9 266:24 <b>deeds</b> 147:5,6,8,18 147:19,21,22 148:3 149:3,6 167:20,25 171:20 173:6,12 177:10 185:9,13,22 186:6 186:9,15,17 188:21 189:24 192:8 196:20 199:20 202:5,10 202:20 208:1 209:19 211:17 223:3,4,17,23 224:1,11,23 225:1 225:8 231:11 232:21,23,24,25 238:7,12,14 244:12 264:15 <b>defaulted</b> 255:21 <b>defendant</b> 143:9,12 252:19 <b>Defendants</b> 141:20 143:17 <b>definitely</b> 191:16 197:24 252:8,13 260:11 <b>definition</b> 249:20 <b>Del</b> 180:8 <b>delete</b> 265:7,14 <b>DeMola</b> 179:24 189:1,4 <b>dep</b> 145:21 <b>department</b> 229:24 235:15 <b>depends</b> 230:7	<b>deposed</b> 147:1 167:24 <b>deposit</b> 161:18 <b>deposition</b> 141:5 145:20 149:10 150:7 183:14 195:3 205:9,23 260:6 268:1 <b>depositions</b> 217:18 <b>described</b> 261:25 <b>DESCRIPTION</b> 144:8 <b>despite</b> 214:4 <b>destroy</b> 265:6 <b>determine</b> 148:15 152:1 172:1 177:7 185:22 <b>determined</b> 215:20 <b>Diary</b> 249:12,24 <b>DiBENEDETTO</b> 141:11 <b>difference</b> 244:3 <b>differences</b> 259:12 <b>different</b> 147:5 150:25 165:15 166:1,5 198:24 235:9 253:13,14 255:14 258:10,24 259:5,11 265:18 266:9 <b>digitalized</b> 236:16 <b>direct</b> 144:2 145:3 233:12 <b>directed</b> 155:10 216:17 <b>direction</b> 168:15 <b>directives</b> 178:4 <b>directly</b> 233:14 241:23 258:20 260:14 <b>disapproved</b> 251:6 252:2 <b>disbursed</b> 241:14 <b>disbursement</b> 241:3 <b>discarded</b> 265:23	<b>discharged</b> 253:25 254:9 <b>disclaimed</b> 168:2 <b>discovered</b> 149:9 252:24 253:17 255:22 <b>discovery</b> 255:6 <b>discuss</b> 189:22 192:21 <b>discussed</b> 180:14 182:10,13 186:24 190:1 212:8 232:2 <b>discussing</b> 147:21 184:13,15 <b>discussion</b> 150:3 155:22 157:21 192:19 209:21 217:14 231:2 <b>discussions</b> 147:20 167:2 187:7 189:19 224:10 238:6,9 239:5 <b>disk</b> 265:10,12 <b>disparage</b> 216:4 <b>disparaged</b> 216:7 <b>disposed</b> 169:11 <b>distinct</b> 174:4 <b>DISTRICT</b> 141:1,1 <b>divided</b> 147:10 <b>document</b> 151:17 151:17 156:16 159:9 197:6 206:6 225:25 240:18 243:20,21 260:8 <b>documentation</b> 254:19 <b>documents</b> 146:9 146:10 148:4,21 149:15 151:9 158:5,6 172:5 173:1 175:16 188:16,18 193:7 193:12,18 194:24 197:5 206:8,14 210:4,6,12,15 220:10 245:9	262:3 <b>doing</b> 150:22,23 154:25 166:19 174:1,2,7 175:7,8 177:20,20 184:7 185:17,20 190:10 192:24 209:9 215:4 216:4 225:3 226:1 230:4 243:3 247:11 248:5,21 <b>dollars</b> 233:22 <b>Donna</b> 141:17 260:7 <b>door</b> 152:18 <b>double</b> 242:6 <b>doubt</b> 244:22,23 249:5 <b>download</b> 265:10 <b>dozens</b> 245:13 <b>dramatically</b> 176:15 <b>DRD</b> 141:2 <b>Drive</b> 143:16 <b>driving</b> 258:7 <b>duly</b> 145:1 269:6 <b>duplicate</b> 244:14 <b>duplication</b> 175:6 <b>duty</b> 184:23 <b>D&amp;Sons</b> 207:20 208:7,18 209:12 210:1,17,19,23 211:5,12 212:1,7 212:20 213:12 214:4 215:10 <b>D'Apolito</b> 141:14 180:3 <b>d/b/a</b> 141:18 163:22	192:4 <b>economic</b> 174:9 <b>Edison</b> 143:12 <b>egregious</b> 163:18 <b>eight</b> 177:8 <b>either</b> 146:15 148:16 167:21,25 175:14 178:16 181:25 192:3 195:13 222:23 235:5 247:9 256:18 258:20 263:7 265:8 <b>Elaine</b> 205:11 <b>elements</b> 246:19 <b>ELGART</b> 143:14 212:4,11 213:2 214:11 229:8,18 231:18 234:16 235:12 236:3,10 238:3 246:14,22 264:23 <b>else's</b> 168:15 <b>employee</b> 195:21 195:21 269:14,16 <b>employees</b> 152:12 <b>empty</b> 200:2 <b>enclosing</b> 206:1 <b>ended</b> 172:6 262:18 <b>endorsement</b> 216:11 227:15 <b>ends</b> 162:2 <b>ENGLISH</b> 143:6 <b>enormous</b> 221:19 <b>entered</b> 200:9 243:17,22 <b>entity</b> 232:5 246:8 <b>entry</b> 236:23 <b>environmental</b> 227:18 <b>escrow</b> 170:4,12,13 170:15,19 187:11 187:15 188:10 <b>escrows</b> 188:12 <b>especially</b> 215:18 265:24
---	---	--	---	--

<b>ESQ</b> 141:12,13,13 141:14 143:3,4,7 143:11,14 <b>essential</b> 246:19 <b>essentially</b> 155:1 159:19 163:15 196:14 199:19 211:4 261:24 <b>estate</b> 254:4 <b>estimated</b> 176:3 <b>etcetera</b> 171:9 <b>Ethel</b> 143:11 <b>eventually</b> 150:18 <b>everybody</b> 215:3 238:25 <b>evolved</b> 234:22 <b>exact</b> 177:23 <b>exactly</b> 149:8 190:1 235:18 265:14 <b>examination</b> 145:3 161:13,14 264:24 267:8 269:6 <b>example</b> 217:8 261:4 <b>examples</b> 163:18 266:5 <b>exception</b> 215:24 216:2,8,9,14 247:21 263:8,14 264:3 266:22 <b>exceptions</b> 227:5 229:3 230:15,16 231:9 <b>excuse</b> 150:17 153:19 229:16 238:14 243:24 <b>executed</b> 172:15 <b>exhaust</b> 259:23 <b>exhausting</b> 258:15 <b>exhibit</b> 151:15 156:15,22,25 157:4,7,12,12,17 158:1,11 159:7,25 160:1,2 163:20,21 164:24 166:24 168:10,24 169:20	187:6 195:13,13 197:7,10 199:24 200:3 203:18 205:22 206:3 207:2 209:4 210:3 217:19,22 218:1,2 218:4,16,21 219:1 219:6,15,19,22 220:12 221:4 222:11,22 225:10 225:12 226:8 227:4 228:8 229:25 231:4 234:3,10 235:22 236:13,18 239:18 240:24 241:1 246:11 260:4 <b>exhibits</b> 156:14,14 168:10 169:17 194:25 205:8 217:17 218:11 237:5 <b>existence</b> 174:23 <b>expand</b> 193:25 <b>expenses</b> 161:3 <b>expensive</b> 233:18 <b>experience</b> 225:20 <b>expert</b> 246:17 <b>expires</b> 269:21 <b>explain</b> 155:9 225:10 253:15 262:13 <b>explains</b> 173:9 <b>explanation</b> 177:12 178:10 <b>extent</b> 263:9 <b>extra</b> 259:12,18	235:15 <b>fall</b> 215:3 <b>familiar</b> 243:18 267:11 <b>far</b> 171:25 173:4 174:18 175:18 185:10 214:3 215:2 247:25 256:5 <b>fathom</b> 203:12 <b>Faulhaber</b> 157:13 157:14 164:15,18 165:10 <b>FBI</b> 172:6,11 173:2 188:16,18 191:4 223:7 <b>February</b> 177:5 178:11 201:19 206:7 269:21 <b>federal</b> 236:17 <b>Federer</b> 168:11,12 <b>fee</b> 200:19,25 237:24 239:15 <b>fees</b> 186:25 188:4 222:24 224:9 236:25 237:13,17 237:25 238:2,2 239:15 <b>fellow</b> 180:8 254:1 <b>Fidelity</b> 141:16 143:17 146:16,22 177:20 178:17 183:16 184:16 204:2,3 213:22 214:20 235:5,10 252:11,14 256:19 258:21 <b>fiduciary</b> 184:23 <b>fifth</b> 237:9 <b>figure</b> 173:25 186:13 221:20 258:12 259:2 <b>file</b> 152:25 153:1 158:25 159:4 161:10 162:10 167:7 169:4 171:6	171:7,8,13 173:24 174:12 177:10 181:14 197:7,23 197:24 204:6 206:21,22 207:6 212:19 219:23 224:15 225:8 226:10,19,21 227:11 230:3 232:21 239:24,25 240:3,12,19 <b>filed</b> 147:7 148:3 161:10 182:8 185:23 186:5,15 199:20 220:6,8,15 222:19,20 223:4,6 223:10,14,20 224:20,22,24 225:11 228:4 238:12 <b>files</b> 157:11,16 160:8 168:20 171:5,10 172:1,11 173:1,5 174:17 176:21,24 177:21 180:17 183:21 205:5,23 206:4 215:4 218:2,5 223:2 235:14 240:5,10 <b>filing</b> 147:4 185:12 222:13 223:23 238:7,15 <b>fill</b> 200:14 227:25 259:21 <b>filled</b> 201:20 202:1 202:5,11 <b>final</b> 220:3 222:14 227:23,24 243:17 243:23,25 <b>finally</b> 172:16 216:3,12 <b>Financial</b> 175:1 <b>financially</b> 269:17 <b>find</b> 146:10 149:25 162:4 166:19	167:7 171:22 208:4 <b>Fine</b> 145:5 <b>finished</b> 172:10,10 <b>firm</b> 154:17 209:19 249:2 <b>first</b> 145:6 149:5 154:4,7,11 156:15 163:15 166:21 182:3 195:7 199:25 200:4 224:21 231:23 233:2 238:18 239:7 240:20 241:1 242:10,12 253:12,15 256:1 <b>five</b> 163:24 230:14 255:14,14 <b>flags</b> 170:22 <b>flip</b> 208:5 227:4 <b>flood</b> 149:18 <b>fluctuate</b> 194:13 <b>follow</b> 250:4 264:25 266:14 <b>following</b> 265:16 <b>follows</b> 145:2 <b>follow-up</b> 145:15 <b>foreclose</b> 245:1 256:2 <b>foreclosed</b> 245:7 <b>foreclosure</b> 211:15 211:19,22 243:24 245:12 246:3,6 255:22 256:15 264:16 <b>foreclosures</b> 155:6 <b>foregoing</b> 269:9 <b>forenoon</b> 142:8 <b>form</b> 150:8 151:17 153:13 185:1,3 204:25 210:7,10 210:11 211:1 212:3,10,25 214:10 227:15 229:7,17 231:15 231:16 234:7,15
--	---	--	---	--



235:11 236:2,9 238:3 246:13 259:20,20,25 260:1,13 265:1,2 <b>format</b> 265:18 <b>forms</b> 149:15 235:8 235:14 258:11,20 258:24 259:5,5,11 259:12,23,23 260:21 261:7,9 265:13 <b>forth</b> 269:12 <b>forward</b> 177:6 178:12 <b>found</b> 150:12 164:21 165:10 167:3,24 173:11 175:18 185:25 <b>foundational</b> 154:5 <b>four</b> 143:7 170:1 202:18 252:7 <b>Four-Family</b> 200:6 <b>FOX</b> 143:14 <b>frame</b> 175:21 178:7 <b>frame-wise</b> 191:9 <b>fraud</b> 188:25 252:24 263:10 <b>frauds</b> 168:3 189:10 191:14 193:11 211:20 248:6,9 251:24 252:5 253:16 264:13 <b>Fred</b> 179:12 <b>free</b> 244:9 <b>Freehold</b> 142:6 <b>Freidman</b> 199:13 200:20,21 <b>Freidmans</b> 201:7 201:17 202:14 <b>Full</b> 264:12 <b>fund</b> 219:16 <b>funding</b> 141:8 151:24 202:22 219:9 241:17,20 <b>funds</b> 241:14	<b>further</b> 164:19 215:23 264:21 267:25 269:9,13 <b>furthest</b> 198:9 <b>future</b> 161:7 <b>FY</b> 204:1 <hr/> <b>G</b> <b>G</b> 145:1 <b>Garber</b> 179:16 <b>GARDENS</b> 141:19 <b>GARY</b> 141:10 <b>Gateway</b> 143:7 <b>gathering</b> 192:13 232:16 <b>general</b> 254:3 <b>generally</b> 204:11 243:2,11 <b>generate</b> 240:20 266:8 <b>generically</b> 153:21 153:22 <b>getting</b> 174:4,5 201:10 253:23 265:9 <b>GF</b> 174:25 175:8,11 <b>give</b> 177:23 190:23 216:3,10,12,25 226:1 251:25 259:17 260:24 <b>given</b> 169:7 186:24 265:22 <b>GL</b> 236:23 237:8 <b>go</b> 145:22 157:20 159:25 161:21 164:19 168:9 185:15 205:2 215:23 217:20 223:11 226:8 230:24 234:19 236:17 240:23 243:2,12 250:10 253:21 255:16 260:14 <b>God</b> 192:23 <b>goes</b> 201:9 214:19	214:20 <b>going</b> 145:24 146:9 149:25 164:20 172:24 174:21 175:9,12 178:17 178:22 183:23 184:25 188:16 200:18 201:13 205:7 208:9 233:6 246:10 257:2,3 262:6 267:15 <b>good</b> 145:4,6 146:3 190:21 259:17 262:20 <b>gotten</b> 175:16 <b>government</b> 236:17 <b>grade</b> 213:3 229:23 265:9 <b>grantor</b> 207:19 <b>green</b> 249:11,23 <b>GRIESER</b> 141:10 <b>Grieser's</b> 147:12 <b>group</b> 158:5 204:12 204:13 210:5 223:19 224:13 <b>Gruntal</b> 174:25 <b>guaranty</b> 212:19,21 <b>guess</b> 146:20 151:24 153:3,4,8 154:16,17,25 155:2 161:7 163:25 165:20 168:9 170:1,23 171:23 172:8,22 172:23 173:4,22 173:25 175:19 176:6 180:6,20 184:10 189:24 190:11 194:8 199:23 200:21 203:14 208:17 217:1 219:17 220:10 222:6 223:1 225:18 227:25 237:3 238:4 244:14	247:10,15 249:18 250:5,15 251:11 259:18 261:2,5 <b>guidelines</b> 250:19 <b>guilty</b> 189:3,7 <b>guys</b> 164:8 190:21 <b>G.J.L</b> 141:7 157:14 163:21 164:22,22 165:11 166:2 171:22 172:17 217:23 218:3 220:20 221:1 222:17 223:15 235:22,25 243:15 244:1,12,17,25 262:16 263:15,20 263:21 264:8 <hr/> <b>H</b> <b>H</b> 144:7 <b>half</b> 181:16 194:19 <b>Hall</b> 198:7 <b>halt</b> 172:12 <b>hand</b> 234:24 235:2 <b>handled</b> 193:20 <b>handling</b> 155:1 <b>hands</b> 225:3 <b>handwriting</b> 195:8 195:13,16,17 <b>handwritten</b> 198:12 236:19 <b>happen</b> 160:8 163:25 164:10 167:14,17 168:6 213:20 229:11,11 245:17 246:6 251:10 254:1 255:17 256:4 259:3 <b>happened</b> 160:25 162:4 171:4 182:4 182:6 184:21 232:10,20 245:14 245:15 256:7,10 259:16 264:25 <b>happening</b> 162:2	186:1,2 238:16 240:13 <b>happens</b> 162:7,12 181:17,21,24 228:17 229:4 245:8 <b>hate</b> 216:4 <b>head</b> 180:10 216:19 <b>held</b> 142:5 170:12 188:12 <b>hell</b> 177:24 <b>help</b> 258:22 259:14 <b>hereinbefore</b> 269:12 <b>hereto</b> 207:23 <b>herewith</b> 207:22 <b>Hills</b> 143:5 <b>hire</b> 260:24 <b>hired</b> 203:9 256:17 256:19,21 <b>hit</b> 190:17 <b>hold</b> 170:12,15,19 <b>holding</b> 188:10 <b>Home</b> 141:8 151:24 153:20 202:22 219:9 241:20 <b>HOMES</b> 141:19 <b>house</b> 225:23 <b>houses</b> 166:1 <b>HUDs</b> 222:5 <b>HUD-1</b> 221:25 <b>huge</b> 221:18 <b>hundred</b> 176:17 <hr/> <b>I</b> <b>ID</b> 236:24 <b>idea</b> 149:22 151:4 171:19 174:20 204:3 207:24 238:16 <b>identification</b> 155:25 156:2,4,6 156:8,10,12 157:24 187:4 <b>identify</b> 217:20 <b>II</b> 141:5,11
--	---	--	---	--

<b>immediately</b> 181:15 207:23	<b>insurable</b> 170:8 211:13 214:6	<b>intervening</b> 197:3	<b>issued</b> 148:22 149:2	149:6 205:15
<b>impact</b> 210:23	<b>insurance</b> 141:15	<b>interview</b> 181:8	150:13,16 151:10	207:3 218:6
212:1	141:16,17 143:9	<b>interviewed</b> 180:21	151:21,23 153:13	225:12 231:10
<b>impacts</b> 211:3	143:17,18 150:10	181:1	158:11,23 162:13	232:24,25 233:7
<b>imposed</b> 255:25	153:5,12 156:18	<b>interviewing</b>	163:6,10 175:18	233:19,24
<b>improper</b> 225:15	158:18 159:17	192:13	175:19 177:8,9,15	<b>joints</b> 149:2
<b>include</b> 254:20	161:24 162:4,6,15	<b>introduce</b> 205:22	177:16 178:11	<b>judge</b> 225:18
266:17	172:22 173:21,23	252:18	195:10 200:13	<b>judges</b> 267:22
<b>includes</b> 261:14	175:18 176:22	<b>introduced</b> 156:13	212:23 213:13	<b>judgment</b> 220:3
<b>incredibly</b> 225:17	177:7 178:5,17	<b>investigating</b>	214:8,22 216:14	222:14 243:17,23
<b>incurred</b> 161:4	184:14 195:8,9	181:12	217:5,8 227:25	244:1 254:8
<b>independent</b> 158:7	200:5 201:12,25	<b>investigation</b>	229:2,5 234:4	<b>judgments</b> 163:15
<b>index</b> 144:1 196:16	212:9,22 213:13	180:23 181:6	255:14 259:9,25	169:13 170:11
<b>indexing</b> 198:20	214:2,7,8,17	182:1,6,7,15,19	263:6 265:17	197:1 241:4,6
<b>indicate</b> 208:6	215:14,21 216:22	192:14,16 251:12	<b>issues</b> 170:16	242:1 253:23
<b>indicated</b> 145:18	217:1,4 218:18,20	<b>investigator</b> 191:23	206:14 242:9	254:6
<b>indicating</b> 255:6	218:21,24 219:3	<b>INVESTMENT</b>	<b>issuing</b> 160:24	<b>July</b> 157:18 164:21
<b>indication</b> 209:18	230:17,25 235:15	141:9	177:18 215:6	166:25 178:7
<b>individual</b> 163:2	239:11 252:20	<b>invoice</b> 144:9	231:12	196:1 198:18
210:9 233:19,20	257:19 261:8	150:12,24 155:24	<b>item</b> 219:24	205:16,18 207:16
241:21	<b>insure</b> 167:14	156:17 158:11,17	<b>items</b> 169:11,15	220:8 243:17
<b>individually</b> 204:14	232:15 233:19,24	160:5 165:1 219:1	230:13,14	<b>jumping</b> 145:16
<b>industry</b> 246:11	246:7 254:6 262:9	234:4 237:4		188:15
260:18 263:4	<b>insured</b> 163:1,5	<b>invoiced</b> 161:1	<b>J</b>	<b>jump-around</b>
<b>inform</b> 184:23	181:25 184:24	165:8	<b>JAMES</b> 141:11	146:25
<b>informally</b> 252:18	199:1,4 245:13	<b>invoices</b> 150:14	<b>JANET</b> 142:3	<b>June</b> 157:16 163:23
<b>information</b> 175:13	256:9	<b>involved</b> 174:24	269:3	164:7,10 166:3
182:22 189:25	<b>insureds</b> 228:14	188:25 217:3	<b>January</b> 156:1,5,23	167:5,25 174:19
192:14 201:20	<b>insurer</b> 214:20	245:25 261:19	157:4,9 159:8	175:2,25 178:7
202:1,10 232:16	<b>insuring</b> 148:6,6,7	<b>involvement</b>	160:12 163:19	185:10 186:4,11
257:24 259:21	148:8,12 151:25	180:15	164:8 166:4 167:4	197:17 198:8
<b>initial</b> 222:16	233:6,6,7 236:6	<b>involving</b> 174:21	168:25 171:8	200:22 247:8,12
<b>initially</b> 153:3	246:1	174:22	177:6 201:19	<b>Junior</b> 157:13
177:1 231:25	<b>intended</b> 207:21	<b>in-house</b> 181:2	218:10	237:10
<b>install</b> 261:7,10,14	<b>interest</b> 157:15	183:18	<b>Jersey</b> 141:1 142:5	<b>J.G.L</b> 165:11
<b>installation</b> 260:20	200:19 212:6	<b>IRINA</b> 143:14	142:6 143:5,8,12	
<b>installed</b> 258:2,6,18	218:8 221:3 231:7	<b>ironically</b> 254:1	143:15,16 156:21	<b>K</b>
258:19	232:4 263:19	<b>issuance</b> 235:24	161:11 267:12	<b>Kane</b> 141:10
<b>instance</b> 230:9	<b>interested</b> 175:24	<b>issue</b> 153:10 162:6	269:4,20	148:22 153:3,5,9
<b>instructed</b> 265:5,6	269:17	162:23 168:21	<b>Jill</b> 150:19 196:10	154:8 155:5 164:6
<b>instructions</b> 208:12	<b>interim</b> 228:15	178:5,17,22	199:4,5,8	167:12,22 170:20
220:1 241:10,12	<b>internal</b> 182:14	184:14 202:9	<b>Jim</b> 179:22 193:21	173:20 175:13,14
242:18 243:5	199:19	212:18,19 214:1	<b>job</b> 162:24 216:4,6	175:22 176:25
246:10,12,20	<b>Internet</b> 265:11	214:15,17 215:15	<b>Jobs</b> 191:11,15,18	183:16 186:24
250:19	<b>interpret</b> 267:12	215:21 216:1,17	<b>John</b> 143:4	187:25 188:1,12
		230:16,25	<b>joint</b> 147:7,21,22	190:10,13 201:10

204:17 211:23 222:1 225:8 233:19 238:10 239:1 247:9 <b>Kane's</b> 147:9,9 149:12 151:12 152:3 163:21 170:2 174:21 176:5 202:4 204:12,19 216:20 247:7 <b>keep</b> 162:14 165:11 240:2 <b>Kelly</b> 180:1 <b>Kennedy</b> 143:4 <b>kept</b> 213:19 215:22 236:16 239:23 <b>kind</b> 149:15 164:11 174:3 177:2 190:22 192:23 202:9 <b>King</b> 150:6 195:4 199:24 200:3 203:18,21 204:7 204:18 205:9 210:3 225:14 <b>King's</b> 150:6 205:22 <b>King-16</b> 205:9 206:18 <b>King-17</b> 205:22 208:17,21 <b>King-18</b> 206:3 <b>King-3</b> 194:25 195:13,18,19 196:7,18 197:7,13 197:17 198:11 199:1,6 200:16,19 201:18 <b>King-4</b> 195:1,14,19 197:10,13,17 198:11 199:4 200:7,24 201:13 201:21 202:17 <b>King-5</b> 151:15 <b>King-6</b> 150:7	<b>knew</b> 238:13 247:25 266:11 <b>knock</b> 146:4 <b>know</b> 145:23 147:25 148:5 150:25 152:6 154:2,9,12 155:1 155:11,18 158:23 160:11 167:6 171:12,13 172:25 173:5,7 175:2,5 176:3 179:14 180:22,25 181:16 182:4,6,18 183:2 185:11,16,18,24 189:3,6,24 190:15 191:8 192:9 195:21,22 196:24 197:19 198:15 199:6 201:2 202:18 203:6,6,23 203:25 208:2,21 211:11,16 213:8 222:2 223:24 225:18 226:5,7 229:10,10 231:12 231:21,22 232:17 233:3,4,15 235:3 235:8 237:11 238:1,5 241:5,18 242:3,5,8 244:11 244:12,19,22 245:15,17,18 246:24,25 248:21 249:10 250:6,18 250:21 251:8,11 252:13,14 254:1 256:6,8,11,17,18 256:22 258:8 260:23 261:12,12 262:2,10 263:17 264:15 265:11,14 267:17,20 <b>knowledge</b> 168:2 178:2 <b>known</b> 154:20	156:20 234:2 <b>knows</b> 185:17 <b>Koch</b> 183:19,19 184:2,15 <b>Kott</b> 143:7 144:4 153:19 185:1 211:1 212:3,10,25 213:5 214:10,13 214:21 220:23 229:7,16 231:15 234:15 235:11 236:2,9 245:2 246:13,21 252:16 252:19 266:15 267:8 <hr/> <b>L</b> <hr/> <b>L</b> 145:1 <b>lack</b> 211:25 263:20 <b>LaFrance</b> 158:3 169:21,21 170:10 <b>lag</b> 186:14 <b>land</b> 141:15 143:9 200:20 218:21 231:7,8 252:19 <b>language</b> 208:3 <b>large</b> 223:19 224:4 <b>Larry</b> 191:19 <b>late</b> 145:18 166:21 186:2 192:3 257:10,10 <b>law</b> 149:16 209:19 225:19 249:12,24 <b>LAWRENCE</b> 141:14 <b>Lawrenceville</b> 143:16 <b>lawsuit</b> 172:24 175:24 181:25 182:8,12,15,23 183:8 <b>lawyer</b> 216:23 256:14,17,19 263:24 264:1,2,5 <b>lawyers</b> 188:12 256:21 267:23	<b>Lawyer's</b> 146:20 146:21,24 <b>lay</b> 253:20 254:25 262:13 266:20 <b>learn</b> 149:5 232:19 <b>learned</b> 211:6 232:20 <b>leave</b> 248:18 267:22 <b>ledger</b> 219:16 <b>left</b> 184:4 248:13 249:2 <b>left-hand</b> 196:24 <b>legal</b> 185:4 226:1 228:20 <b>Leibman</b> 191:12,15 <b>lender</b> 153:9,16,20 154:2,4,6,10 162:21 163:1,5 179:7 184:17 201:11,13 212:2 217:3 229:12 236:6 240:16 241:5 242:3,7 255:21 <b>lenders</b> 245:20 255:3,7 <b>Lenox</b> 143:16 <b>lent</b> 229:14 <b>letter</b> 144:9,10,10 144:12,12 146:7 150:11 151:10,20 152:14 156:1,3,5 156:11,19,23 157:1,4,17,23 158:2 159:8,13,15 159:21 163:6,10 164:20,21,23 166:24 168:10,14 168:19,24 169:6 169:20 172:21 205:25 206:1 209:11 212:15,17 212:23 213:17 216:8,23 217:4 219:3,9 227:19	229:13 234:14,18 235:20,24,24 239:12 256:24,25 257:1,7,8,9,12 261:15 263:18 265:1 267:17,18 267:21 <b>letters</b> 152:7 155:10,16 161:15 169:16 215:1 234:24 235:4,9,18 249:7 257:16 258:25 259:6,9,17 265:18 266:12 267:12 <b>level</b> 182:7 <b>liability</b> 162:20,20 <b>license</b> 249:15 269:21 <b>licensed</b> 249:21 <b>licensing</b> 261:5 <b>lien</b> 163:15,16 220:3 245:11,19 254:4,12 255:23 255:25,25 256:1 <b>liens</b> 170:11 197:1 197:2 241:4,5 242:1 254:20 <b>liked</b> 209:8 <b>Limited</b> 141:7 157:14 217:23 218:3 220:20 221:1 263:20 <b>Limited's</b> 243:16 <b>line</b> 202:22 223:12 237:9,17,18 239:10 <b>lines</b> 237:23 <b>lingo</b> 202:23 257:6 257:8 <b>list</b> 227:4 247:19 249:22,25 251:14 251:18,25 252:6 252:10 <b>listed</b> 152:3 156:15 164:23 197:7
--	---	--	--	--

219:6 239:14 242:2,14 244:13 <b>lists</b> 146:15 <b>little</b> 200:1 202:17 <b>LLP</b> 143:3,6,14 <b>loan</b> 154:1 231:8 241:3 255:11 263:16,18 266:18 <b>loaned</b> 172:14 <b>loans</b> 241:17,19 255:3,7,12,13,21 256:5,8 257:4,15 258:8,9 261:19,22 <b>locate</b> 210:1 <b>location</b> 240:17 <b>long</b> 184:3 185:11 185:21 190:2 203:7 205:12,25 230:10 257:25 <b>longer</b> 244:1,5,6 247:11 <b>look</b> 146:9 151:16 158:4,10,14 163:21 168:23 174:17 187:9 194:24 195:4 196:16 203:17,22 205:21 206:10 208:16,20 210:3 220:9 221:19 225:11 234:3,10 236:21,22 237:7 237:22 239:9,18 240:8 247:6 259:7 265:25 <b>looked</b> 146:8 176:5 177:1 185:8 230:2 <b>looking</b> 159:3 164:18 202:20 206:14 <b>Looks</b> 220:24 <b>loose</b> 177:24 <b>Lorraine</b> 150:6 195:4 205:9 225:14 <b>Lory</b> 203:21	<b>losses</b> 194:7 <b>lot</b> 152:12 178:9 202:5 211:14 245:8 253:4 <b>love</b> 222:3 <b>lunch</b> 203:15,16 <b>L.L.C</b> 141:10 <hr/> <b>M</b> <b>M</b> 141:13 199:12 <b>Magnanini</b> 143:3,3 144:4 145:3 147:16 150:2 153:22 155:20 213:7 214:14 218:14 255:10 259:4 264:24 <b>Magnanini's</b> 253:2 <b>Main</b> 142:6 <b>maintained</b> 240:18 <b>makers</b> 174:16 <b>making</b> 211:3 <b>malfeasance</b> 236:7 <b>man</b> 246:15 <b>Management</b> 141:6 141:9,10 147:11 163:22 201:1 218:9 <b>mandatory</b> 222:9 <b>MANNING</b> 142:5 <b>manually</b> 236:16 <b>March</b> 160:14,18 203:21 204:17 260:5 <b>mark</b> 203:18 217:25 <b>marked</b> 150:6 151:15 155:25 156:2,4,6,8,10,12 156:21,25 157:3 157:24 158:1 168:24 187:4,6 194:25 205:8 206:18 208:17 217:19 230:10,24 240:9 243:13	<b>marked-up</b> 230:1,5 230:17,19 <b>market</b> 256:3 <b>marks</b> 230:7 <b>MARTIN</b> 143:11 <b>Marty</b> 218:15 <b>MAS</b> 141:2 <b>materially</b> 233:21 <b>matter</b> 142:2 <b>McCARTER</b> 143:6 <b>McGOVERN</b> 185:3 <b>McGOWAN</b> 143:11 145:17 147:15,17 165:23 185:14 211:2 212:5,13 213:1 218:11 229:9,19 231:16 234:17 235:13 236:4,11 238:17 244:3 246:15 <b>mean</b> 213:24 217:2 218:12 220:13 225:24 228:20,21 256:18 263:14 266:20 <b>Meaning</b> 209:6 <b>means</b> 220:15 221:5 <b>meant</b> 195:23 <b>Mechanically</b> 256:23 257:14 <b>mechanics</b> 262:2 <b>meet</b> 183:20 191:17 192:2 250:10 <b>meeting</b> 192:12,21 193:6 <b>memo</b> 204:4,8,25 205:2 <b>memoranda</b> 203:24 <b>memorandum</b> 203:20 210:4 <b>mentioned</b> 254:23 <b>met</b> 180:3 183:21 191:3 192:25	230:9 252:17 <b>METHFESSEL</b> 143:10 <b>Michael</b> 141:13 149:16,16 220:16 248:22 <b>mid</b> 160:14,18 <b>middle</b> 160:20 <b>Military</b> 213:3 <b>million</b> 194:19 <b>miniscule</b> 194:6 <b>minute</b> 150:2,17 <b>miscommunication</b> 145:23 <b>missing</b> 228:1 <b>mistake</b> 200:8 260:3 265:19 267:4,15 <b>mistakes</b> 267:17,19 <b>misunderstanding</b> 201:3 <b>modify</b> 265:13 <b>money</b> 148:14 162:8,17 163:12 172:14 173:22 174:15 183:3,7,11 213:20,22 214:9 214:16 215:18,19 215:22 216:22 224:8 225:7 229:14 233:8 239:1 241:22 254:7 <b>Monmouth</b> 186:7 191:24 198:18 206:7 207:21 220:5 222:12,20 222:23 237:10 <b>Montanye</b> 150:19 152:4 196:10 199:5,8,18 200:25 202:21,21 <b>Montanye's</b> 199:5 <b>month</b> 176:4,11,16 176:16,24 210:21 <b>months</b> 163:24	165:17 170:1 176:1,16,17 177:3 <b>morning</b> 145:4 <b>mortgage</b> 153:17 155:2 162:21,23 168:22 171:24 172:2,14,15,18 196:17 199:12 202:21 203:1 205:10 206:17,24 240:15,15 244:20 255:19,20,23 256:14 264:10 266:25 <b>mortgagee</b> 147:13 147:15 <b>mortgages</b> 147:6 169:12 171:1 173:6,11 185:13 185:22 186:6,10 188:21 192:8 199:9 211:17 215:1 224:24 241:4,6 242:1 245:7 <b>mortgagor</b> 147:16 148:7,14 <b>mortgagors</b> 233:8 <b>motion</b> 255:24 <b>Mulberry</b> 143:8 <b>MURPHY</b> 141:19 <hr/> <b>N</b> <b>N</b> 143:1 202:22 <b>name</b> 189:16 195:24 199:5 231:6 240:16,16 243:16 257:23 259:9 <b>named</b> 150:19 179:12 180:8 <b>names</b> 180:7 <b>Nancy</b> 189:18 <b>National</b> 141:8,16 143:18 151:24 153:20 202:21
--	---	---	---	---



219:9 241:20 <b>Nations</b> 141:15 143:17 204:2 235:5 256:19 <b>necessary</b> 193:25 242:4 <b>need</b> 169:11 170:8 254:9 259:16 261:9 <b>needed</b> 148:3,5 153:11 170:16 203:22 254:5,8 <b>needs</b> 166:10 <b>neither</b> 247:25 269:13,15 <b>never</b> 154:4 162:13 167:17 171:25 172:19 173:6,8 179:3,5 182:10 203:8 209:17 210:20 211:7,8 212:23 214:2,4 223:14 225:7,10 229:11 238:12,13 239:5 242:17 244:24 <b>new</b> 141:1,16,17 142:5,6 143:5,8 143:12,15,16,17 143:18 156:20 161:11 259:25 265:22 267:11 269:4,20 <b>Newark</b> 143:8 <b>newspaper</b> 189:2 <b>NHF</b> 182:13,22 183:6 <b>nine</b> 239:10 <b>non-approved</b> 146:15 <b>non-attorney</b> 225:15 <b>normal</b> 158:12 165:21,25 208:3 239:22 243:6 <b>normally</b> 145:9	201:25 <b>Norman</b> 200:20 <b>Notary</b> 142:4 145:2 269:3,20 <b>note</b> 203:14 <b>notebooks</b> 250:20 <b>notes</b> 142:1 181:9 190:3 196:12,15 199:19 <b>Notrary</b> 268:10 <b>November</b> 248:17 <b>number</b> 144:8 147:6 149:14 155:10 158:21 160:7 162:10 164:4 167:25 173:11 176:9,12 176:25 185:14 197:7,8,11 203:4 203:12 213:23 217:5 219:15,20 226:11 227:15 237:9 256:4 265:25 266:3,6,9 <b>numbers</b> 175:4 176:2 186:18 221:18,19 258:1 <b>nutshell</b> 180:17  <b>O</b> <b>O</b> 145:1 <b>OAKWOOD</b> 141:7 <b>object</b> 185:1,3 211:1 212:3,10,25 214:10 229:7,16 231:15,16 234:15 235:11 236:2,9 246:13 <b>objection</b> 212:4,11 213:2,6 214:11,25 215:9,14 229:8,18 231:18 234:16 235:12 236:3,10 238:3 246:14,21 246:22 <b>objections</b> 163:13	214:24 215:5 253:18 <b>obligated</b> 214:9 <b>obtain</b> 235:23 <b>obtained</b> 204:3 246:4,8 <b>obtaining</b> 215:10 <b>obviously</b> 165:5 167:18 <b>occur</b> 168:1 259:15 <b>occurred</b> 177:4 229:4 254:12 258:13 <b>occurring</b> 176:1 193:3 209:15 <b>occurs</b> 163:19 <b>October</b> 219:2 226:10,16 235:21 <b>odd</b> 238:21,21 <b>office</b> 142:5 149:19 150:9 167:22 168:13 191:25 193:17 204:16,20 207:22 210:19 257:14 <b>officer</b> 169:22 189:2 230:6 <b>officers</b> 188:24 <b>offices</b> 149:16 220:16 <b>Oh</b> 192:23 <b>okay</b> 146:6,13,20 146:22 148:20 149:5 151:8 153:2 153:15 154:10 155:3,19 158:16 159:7,25 160:21 160:25 161:17 163:1 165:1 166:22 169:19 171:21 173:9,14 175:16 176:14 178:4,20 179:8 180:6 181:11 182:4 183:23 184:1 186:21	188:15 192:11,18 193:10 194:23 195:6 196:23 197:6,10 198:21 199:23 200:18 201:5 203:14 204:11 206:12 207:1 208:20 210:11,15 211:22 211:25 213:9 215:13,17 216:16 217:13 223:13 226:21 227:24 228:12 229:12 230:16,23 234:2,7 235:8 237:16 239:17 240:2 241:9 243:10,12 244:17,19 246:25 248:16 249:18 250:1 252:15,20 252:25 256:23 257:14 266:14 267:7 <b>old</b> 168:20 260:1 265:6,7,23 <b>old-fashioned</b> 257:23 <b>omit</b> 216:11 230:10 230:13 267:1 <b>omitted</b> 169:8 <b>once</b> 161:17 167:3 182:7 185:25 190:8 191:10 215:14 229:22 232:20,21 <b>ones</b> 150:25 166:6 174:22 208:3 210:9 223:6,9 245:21,23 259:8 259:18 265:22,23 <b>ongoing</b> 215:7 <b>open</b> 163:16 168:22 169:11,12 215:1 <b>open-ended</b> 201:5 <b>operate</b> 261:24	<b>operation</b> 261:25 <b>opportunity</b> 248:18 <b>opposed</b> 188:18 204:2 233:20 <b>order</b> 149:11,15 150:8 153:6 160:3 166:11 170:8 173:15 197:20 204:9,15 211:13 211:17 219:18 240:14,20 254:6 259:17 261:10 <b>ordered</b> 151:1 153:4,4 196:3 197:22 198:5 204:23 <b>ordering</b> 149:19 150:21 151:5 <b>orders</b> 149:23 176:17 211:16 <b>ordinary</b> 158:14 <b>original</b> 148:6,13 154:18 159:1,2 172:5,25 173:1,16 173:23 174:8,12 174:13 188:18 193:7 197:4,23 199:14 208:7 209:16 223:7 <b>originally</b> 199:13 <b>originals</b> 172:7 173:5 <b>Osis</b> 217:23 222:16 226:16 228:6,15 228:21,21 <b>outside</b> 181:2 216:20 <b>outstanding</b> 212:6 221:3,17 242:9 263:19 <b>overlaps</b> 174:3 <b>owned</b> 201:1,16 226:17 244:6 <b>owner</b> 164:16 199:13,14 200:12 208:7 244:13,14
---	--	---	--	--

owners 165:10 240:14	234:6 244:7,9 245:8	166:7,9 167:3,12 167:13,19 168:11 170:14,24 173:15 175:7,15 178:21 179:2 190:10,13 197:22,24 201:10 209:6,14,22 215:1 221:8 224:11 225:8 232:1 233:12 238:10 239:1 247:10,25 248:12,16 249:2,3 252:1,9	pled 189:2,6 Plus 176:21 221:16 point 145:21,25 164:21 170:4 172:10 178:21 180:4 182:2 189:11 190:11 191:4 216:14 225:4 226:15 227:1 228:18 245:22 247:10 pointing 195:18 223:13 policies 163:14 175:18 177:8,15 177:18 178:5,11 178:18,23 180:16 184:15 212:9 215:6 216:13,17 policy 160:24 161:16 162:3,4,6 162:10,13,21,23 163:3,7 168:21 200:5 212:19,22 213:13,23 214:7 214:15,18,21 215:15,21,24 216:1,9 217:7 218:18 219:3 227:23,24 229:1,2 229:6 230:25 263:6,16,17 264:1 266:25 portion 145:19 183:3 positive 192:6 possession 165:18 227:1 244:1,4 possible 186:12 223:11 249:4,5 260:3 possibly 166:23 180:5 188:1 229:20,21 263:16 264:8 practice 225:19	239:22 249:11 predecessor 174:25 prefer 222:3 preferred 222:7 premises 207:19 Premium 161:22 161:22 prepare 225:16,24 prepared 152:7 167:21 217:25 221:8 225:14,24 238:24 preparing 149:10 preprinted 149:15 258:17 259:20,23 266:6,7 Press 189:15 press's 191:2 presumably 158:20 215:7 presume 170:5,23 pretty 171:4 173:18 208:3 225:2 233:13 249:11 previous 166:6 224:4 previously 151:15 184:12 194:24 205:8 pre-numbered 257:22 price 221:12 240:15 Princeton 143:15 print 257:17,17 printout 236:15 243:14 prior 165:6 185:7 194:3,7,8 207:23 223:22 231:12 232:25 237:4 241:2 269:5 privacy 241:21 probably 146:8 160:11,13,17,18 160:19 165:13
<hr/>				
P				
P 143:1,1 package 261:7,8,14 packet 153:18 packets 154:1 page 144:8 196:17 199:15 207:2,13 227:14 228:9 234:19 235:6 236:18,22 240:21 241:1 242:13 paid 161:10 162:8 162:9,10 171:8 173:16 174:4,5 183:2,4 213:14,17 213:21,24 214:16 215:13 216:22 217:5 221:21 225:7 254:9 262:23 paper 150:1 189:14 190:7,17 192:5 240:20 paragraph 199:25 200:1,3,18,25 201:16,18,20 202:18 207:18 226:23 228:1 258:12 259:13,19 paraphrase 253:3 262:6 267:15 parenthesis 148:24 158:22 174:18 226:11 Park 150:20 156:20 157:3,15 158:8 189:15 217:25	Parkway 143:4 part 153:17,23 158:25 159:1,2 161:10 180:22 191:2 206:21 211:17 224:19 232:15 240:5 245:11 250:5 particular 203:25 255:18 particularly 210:8 parties 269:15 pattern 185:12 Paul 180:8 pay 161:20,24 183:7 186:20 188:3 213:3 224:9 229:22 254:18 265:9 payable 157:9 160:4 paying 155:1 253:23 payment 160:9 161:9 183:1 187:8 187:10 221:2 222:24 225:5 237:2,8,11 239:10 239:21 242:15 payments 187:18 pending 245:4 people 167:21 180:6 203:9 209:17 232:14 people's 266:21 Pepsny 141:13,18 147:1,19,22,23 148:1,16 150:16 150:21 151:4,11 151:25 152:2 153:2,4,8 154:17 154:20 155:4,7,11 156:24 157:2,6 158:2 159:14,20	Pepsny's 149:10,19 164:2 167:15 percent 147:10,13 176:10,10 192:4 218:7,9 232:3 percentage 186:19 perfected 255:24 period 146:17,18 223:22,24 257:3 258:4,10,24 person 183:20 personal 145:17 pertinent 257:24 Peter 180:10 physical 171:6,7 physically 257:15 pick 164:12,13 194:21 212:20 picked 199:7,15,18 207:8,11 213:11 picks 176:18 piece 240:20 pieces 150:1 PIERSON 141:12 place 150:3 155:22 157:21 186:22 192:19 203:16 217:14 231:2 238:18 247:1 269:12 placed 245:11 Plaintiff 141:4 143:5		

166:20,21 170:14 171:7,12 173:7,9 175:23 178:3,8 190:12 194:12 198:16 199:16,22 200:8 207:7,8 216:13 223:6 224:13 230:13 233:10 245:13 247:12,13 248:20 252:12 254:17,17 255:18 258:1,15 <b>problem</b> 177:25 224:8 226:4 228:19 263:5 264:19 <b>problems</b> 154:3,12 236:1 251:7,9,15 253:4 <b>proceed</b> 145:14 146:1 <b>proceedings</b> 142:2 <b>proceeds</b> 161:1 241:3 <b>process</b> 160:24 192:24 193:1 211:15,20,23 232:16 264:16 <b>produced</b> 156:16 204:2 205:20 206:4 218:14,17 218:22 219:4,12 219:25 240:9 <b>product</b> 230:3 <b>production</b> 152:22 161:15 169:3 <b>profit</b> 194:6 <b>profitable</b> 194:4,8 194:17 <b>profits</b> 193:22 194:10,13 <b>proof</b> 216:10 <b>proofs</b> 169:7 <b>proper</b> 264:7,10 <b>properly</b> 160:23 200:10 216:4,10	255:24 <b>properties</b> 141:7 160:9 167:8 173:14 175:23 176:6,8 183:11 184:18 200:13 202:4 211:23 245:7,13 247:4,7 256:9 262:19 <b>property</b> 141:6,8,9 147:9,10,11 148:23 149:13 150:18 151:12,13 153:10 154:8 155:5 156:20 157:6 163:22,23 163:24 164:9,11 164:16 165:11,17 165:22 166:3 167:4,9 170:3,7,7 171:2,14 172:13 172:15,16,18 198:10 199:2 200:12,15 201:1,1 201:7,8 202:14 205:12,17 206:21 208:7,14,15 210:23,24 211:9 212:7 218:9 220:4 221:1 226:17 227:3 228:15 232:4 235:25 240:17 242:8,9 244:2 245:1,9,11 246:6 254:3,5,8 254:12 256:1,2 <b>proposed</b> 199:1,4 228:14 <b>prosecutor</b> 191:20 191:21,22 <b>Prosecutor's</b> 191:24 <b>protection</b> 150:11 151:10 172:21 212:23 213:16 216:23 217:4	227:19 235:9 239:11 249:7 256:24 <b>protocol</b> 181:12 <b>provide</b> 182:22 250:19 265:3 <b>provided</b> 250:22 <b>provider</b> 260:19 261:3,13,16,21 265:3 <b>providers</b> 260:18 <b>public</b> 142:4 168:3 178:1 189:10 191:14 193:11,15 211:20 248:6,9 251:24 252:6 263:11 264:13 268:10 269:3,20 <b>purchase</b> 148:13,22 153:10 154:7 158:23 164:3,6,7 170:7,24 171:18 173:16,21 174:2,8 197:13 198:22 200:4,16 221:1 229:15 233:8 240:15 242:8 255:7 <b>purchased</b> 147:9 149:13 150:18 167:5,9 172:16 173:23 221:15,16 255:11,12 <b>purchaser</b> 148:13 162:18 163:2 171:23 199:2 255:15 <b>purchases</b> 153:6 170:20 221:25 <b>purchasing</b> 205:12 <b>purports</b> 203:20 <b>purpose</b> 159:14 192:11 204:7,16 205:11 <b>pursuant</b> 237:3 <b>put</b> 160:10,17	164:2 165:4,7 200:11 207:24 208:2 215:24 216:7,8 253:20 254:2 263:8,13,16 263:17,19 265:12 266:25 267:1 <b>p.m</b> 268:2 <b>P.O</b> 143:15 <hr/> <b>Q</b> <b>Quality</b> 180:13 <b>quarter</b> 166:21 <b>question</b> 145:6,9 154:5,21 185:2,19 193:25 195:7 199:25 201:5 214:14 222:18 223:1 225:25 228:8 231:10,19 245:2,4 246:18,23 249:19 256:12 258:23 266:14,17 <b>questioning</b> 252:23 <b>questions</b> 145:15 146:6,14 147:1,3 155:11 169:9 181:19 247:2,17 252:24 253:2 264:22,23 267:25 <b>quite</b> 256:7 <b>quoted</b> 190:6 <hr/> <b>R</b> <b>R</b> 141:11 143:1,7 143:11 145:1,1 220:13,13 221:5,5 <b>Rafael</b> 218:4 <b>raise</b> 170:22 <b>raised</b> 169:9 <b>ran</b> 164:10 165:20 166:3 197:1 198:17,18 199:8 199:12,13 226:15 <b>rarely</b> 230:19,21 243:9 <b>rates</b> 161:11	<b>RD</b> 195:20,23 <b>read</b> 245:4 <b>ready</b> 145:22 <b>real</b> 191:1 254:4 <b>realize</b> 262:9 <b>realized</b> 177:25 <b>really</b> 161:8 188:19 190:22 <b>REALTORS</b> 141:18 <b>realty</b> 141:18,19 237:13,15,24 239:15 <b>reason</b> 152:24 162:12 179:4 188:6 201:15 206:20 233:23 239:2,14 242:24 263:2 265:16 <b>reasons</b> 173:19 224:3,3 <b>recall</b> 145:11 147:21,23 148:2 148:17 149:7,22 149:23 153:7 155:15,18 159:11 159:12,20,22 167:2,19,23 168:3 173:3 178:15,23 178:25 179:8 184:4,15,20 185:24 186:1,2 188:19,19 189:8 189:13,25 190:6 191:6,13 192:9 193:16,19 204:21 206:17 209:9,21 209:24 224:14 233:11 235:7 238:5 245:22 247:9 248:18,21 249:1 251:23 252:5,9,10 <b>recalled</b> 225:6 <b>recalls</b> 147:2 <b>receipt</b> 222:13,24
---	---	--	--	---

<b>receive</b> 154:6,11 208:25 230:17,21 243:7,10 <b>received</b> 154:13 155:25 156:2,4,6 156:7,9,12 157:24 160:8 161:17 178:4 187:3,18,25 188:7 193:16 209:4 239:21 <b>receiving</b> 226:3 <b>recess</b> 186:22 203:16 247:1 <b>recital</b> 208:13 <b>recognizance</b> 159:17 169:13 253:24 254:3,5 <b>recognize</b> 151:16 195:12,16 196:10 <b>recollection</b> 158:7 177:15 187:24 206:13 223:16 <b>recommend</b> 251:4 <b>record</b> 150:2,4 155:20,23 157:20 157:22 160:11,12 160:18 161:15 164:19 165:16 171:9 186:17 188:20 192:18,20 196:3,14 202:20 207:9 209:12 210:4,22 217:13 217:15,21 220:14 224:12 226:6 230:4 231:3 255:11 264:6,7,9 266:24 <b>recorded</b> 147:18 171:25 172:3,6,8 172:17,19 173:6,7 173:11 185:9 186:5,7,10 189:23 192:7 201:19,22 202:14 203:2 206:25 207:1,7,10	207:21 209:19 210:20 214:2 223:17,18 224:2,2 224:4,5 231:23 232:14,25 244:16 244:20,24 245:10 255:21 262:17 264:16,17 <b>recording</b> 160:15 186:25 188:4 196:17 197:5 206:6 210:13,16 211:16 224:9 231:23 237:14,17 237:25 238:2 239:2,15 <b>records</b> 198:7 201:17 239:19 <b>recourse</b> 172:20 229:13 <b>recovered</b> 255:23 <b>RECROSS</b> 144:2 267:8 <b>red</b> 170:22 <b>REDIRECT</b> 144:2 264:24 <b>refer</b> 153:19 <b>referred</b> 169:16 231:6 254:15 <b>referring</b> 153:20 253:17 262:11 <b>refresh</b> 187:24 <b>refund</b> 214:9 <b>refunded</b> 183:11 215:19 <b>regarding</b> 156:24 157:2,6,19 158:3 158:8 169:9 183:16 <b>regular</b> 183:16 188:8,8 <b>regularly</b> 187:18 234:7 <b>related</b> 155:4 175:6 242:9 266:22 <b>relative</b> 269:14,16	<b>relayed</b> 175:13,14 <b>released</b> 254:5,8 <b>remain</b> 230:15 <b>remained</b> 243:15 <b>remedies</b> 228:20 <b>remedy</b> 228:25 <b>remember</b> 166:6 167:12 189:16 190:15,16,17,18 195:22 203:7,9 210:8,8,9 213:22 215:2 222:2,5 223:25 252:12 253:5,9 <b>remitted</b> 213:23 <b>removed</b> 159:17 264:3 <b>rendered</b> 217:7 <b>rep</b> 250:10 <b>repeating</b> 213:10 <b>reporter</b> 142:4 189:10,13,17 190:14 245:5 269:4 <b>represent</b> 150:7 210:18 236:14 252:19 255:5 260:22 <b>representative</b> 246:16 260:6 <b>represented</b> 149:12 152:2 203:12 <b>representing</b> 149:21 151:2,5 256:14 <b>reps</b> 250:8 <b>reputation</b> 250:9 <b>request</b> 150:23 153:8 158:16,17 164:3,6 165:4,7 217:3 249:10 <b>requested</b> 231:14 <b>requesting</b> 150:9 204:22 <b>requests</b> 160:12 <b>required</b> 185:13	222:7 <b>requirement</b> 232:13 <b>requirements</b> 153:11 155:11,17 230:8,11 231:4,9 241:14 <b>requires</b> 170:12 <b>rerecord</b> 264:9,10 <b>Residences</b> 200:6 <b>residential</b> 188:9 200:2,5,12,15 215:18 <b>respect</b> 257:15 <b>responded</b> 159:21 233:12,14 <b>response</b> 167:15 253:1 <b>responsive</b> 146:10 <b>result</b> 182:15 183:7 243:25 <b>retain</b> 239:20 <b>retained</b> 223:3,5 <b>return</b> 162:17 214:18 220:14 226:6 <b>returned</b> 162:18 216:21 217:9,10 220:17 221:6 <b>revealed</b> 232:7,11 <b>review</b> 145:7 152:13,14 220:11 <b>rhyme</b> 242:24 <b>Richard</b> 141:11,11 141:13 168:11 <b>Ridge</b> 217:24 218:4 218:8 219:4,11 220:4,20 234:5 236:23 243:15 255:19 <b>right</b> 146:22,25 147:17 148:25 151:3 152:19 153:25 159:6 160:16 161:5,19 165:3 166:8 167:1	171:3,14,16 172:25 173:13,14 178:3,6 192:1 193:4,13 195:17 195:20 199:3 200:17 203:3 207:4,15 208:8 209:7,20 211:24 211:24 212:18 213:18 214:23 215:12 219:7 224:6 225:1 226:14 239:16 241:11,15 246:5 250:17 254:14 255:9,18 259:1,10 261:3 262:10 263:9 264:19 266:4,13 <b>right-hand</b> 203:5 220:13 <b>road</b> 143:11 250:8 <b>ROBERT</b> 141:6,10 143:3 144:3 268:6 269:6 <b>ROLAND</b> 141:12 <b>Rose</b> 195:20,23,24 <b>Rosso</b> 180:8 <b>ROTHSCHILD</b> 143:14 <b>rough</b> 253:2 <b>RTF</b> 237:13 <b>run</b> 150:9 164:15 164:17 174:7 195:23,24 198:25 199:17 230:24 <b>rundown</b> 197:3 198:17 <b>runs</b> 163:12
--	---	---	--	--

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400



169:12 170:6 171:1 174:3,6,8 197:14 198:22 200:24 206:9,15 218:25 221:12 226:13 229:14 242:7 243:16,22 <b>sales</b> 155:5 170:20 204:12 243:18 246:1,7 247:8 250:8,10 <b>Sally</b> 157:19 203:21 204:8 <b>Salvatoriello</b> 205:11 210:25 <b>Salvatoriellos</b> 205:14,17 206:10 207:17 208:10 211:8 <b>satisfied</b> 241:2,4,6 242:2,4 <b>save</b> 173:22 <b>saw</b> 203:25 214:25 238:13 242:7 <b>saying</b> 159:18 162:14 166:9 167:13 168:6 170:6,10 186:4 215:1,20 244:15 259:4 <b>says</b> 187:11,20 195:20 197:7 200:19,25 201:16 201:17,18 207:18 209:11 216:9 221:2 227:7,8,15 228:13 231:5 236:24 237:10,11 237:18 241:1,3 <b>Schedule</b> 230:10,11 230:14 <b>Schlessinger</b> 179:13 <b>screeching</b> 172:12 <b>screwing</b> 165:11 <b>search</b> 149:18	161:14 165:16 166:7 174:2,3 176:21 198:7,9 207:8 217:6 232:14 <b>searched</b> 173:8 198:20 <b>searcher</b> 160:13 196:25 <b>searchers</b> 230:4 <b>searcher's</b> 195:24 196:12,15 199:19 202:23 <b>searches</b> 150:11 156:19 158:18 161:6 164:11 165:20 166:2,3 171:1,20 174:7 185:8,21 203:8,8 209:25 210:18 217:6 219:4 226:15 230:24 239:11 <b>searching</b> 171:22 173:10 176:23 <b>search-wise</b> 164:1 <b>second</b> 148:8 155:21 157:20 166:11,14 174:11 197:24 207:2 224:13,15,23 231:21,22 234:19 235:6 236:22 247:8 266:16 <b>secretary</b> 152:9 <b>section</b> 230:10,14 249:12,24 <b>securities</b> 141:3 154:2 171:24 172:14,19,20 174:22 175:8 179:1,6,9 180:7 180:15 184:17,21 184:24 188:25 205:10 212:1 219:13,25 220:2	241:13,16,23 244:20 245:1 255:4,13,15 <b>securitized</b> 255:13 <b>see</b> 150:10 151:16 152:22 157:8 164:20 171:20 206:20 219:23 223:12 225:20,21 236:19,20,24 242:10 258:16 259:14,16 <b>seeing</b> 164:18 206:17 <b>seen</b> 148:21,21 149:1,24 154:1 155:9 159:9 168:18 174:20 177:4 203:23,24 204:15,15 206:23 207:25 208:22 210:5,7,10 221:17 221:18 228:3 229:11 235:4,4,21 239:7 245:23 <b>segregated</b> 213:22 <b>sell</b> 244:9 246:5 261:6,6 <b>seller</b> 149:21 151:5 169:10,14 172:18 254:2 262:16 <b>sellers</b> 209:16 <b>seller's</b> 221:10 232:1 240:16 <b>selling</b> 149:14 165:17 166:20 175:23 214:5 247:7 262:19 <b>send</b> 152:18 155:16 204:22 210:12 214:16 <b>sending</b> 155:15 204:8,20 <b>Senior</b> 218:4 <b>sense</b> 174:10 <b>sent</b> 146:7 150:24	152:15 168:14 206:6 209:1 210:16 238:25 239:1 257:18 263:22 264:1 <b>separate</b> 171:7 <b>separated</b> 171:10 <b>September</b> 168:1 <b>sequence</b> 264:11 <b>series</b> 196:7,23 217:16 <b>service</b> 151:20 152:7,14 156:19 163:6,10 212:15 212:17 219:3,9 229:13 234:14,18 235:3,20 256:25 257:1,9,12,16 261:15,16,21 263:18 265:1,18 267:12,16,18,21 <b>services</b> 217:7 250:13 <b>set</b> 269:12 <b>settled</b> 182:25 <b>settlement</b> 242:14 243:1,2 <b>seven</b> 160:7 <b>sewer</b> 221:3,17 <b>share</b> 183:3 <b>sheet</b> 242:16 <b>Sheri</b> 168:11 <b>Sherry</b> 168:12 <b>Shields</b> 189:18,20 190:9 <b>shocked</b> 186:16 <b>short</b> 143:5 252:22 <b>Shorthand</b> 142:4 <b>show</b> 150:5 151:14 157:25 187:6 194:7 205:7 230:8 <b>showed</b> 154:14 237:4 <b>showing</b> 172:17 201:6 222:24 226:12 243:14,22	<b>shown</b> 217:16 226:16 <b>shows</b> 220:19 222:19 242:15 <b>side</b> 196:24 203:5 <b>sign</b> 152:18 227:9 227:21 234:24 <b>Signatory</b> 227:8 <b>signature</b> 234:20 <b>signed</b> 152:24 169:3 227:12 235:1 <b>significance</b> 197:1 <b>significant</b> 176:2 <b>similar</b> 209:4 224:2 224:3 250:22 <b>simple</b> 200:19,25 <b>simpler</b> 244:14 <b>simultaneously</b> 207:22 233:1 <b>situation</b> 214:15 216:21 217:9 254:11,14 262:22 <b>situations</b> 254:16 256:13 <b>skip</b> 236:13 <b>SKOWRENSKI</b> 141:11 <b>slightly</b> 160:2 235:16 <b>small</b> 186:19 <b>software</b> 260:17,17 260:24 261:4,8 265:3 <b>sold</b> 163:25 166:18 167:4,25 171:15 172:15 176:6,8 208:10 225:23 228:16,17 243:16 245:7 256:9 <b>solve</b> 264:19 <b>somebody</b> 165:16 199:5 200:14 260:24 264:17 <b>somewhat</b> 194:16 199:24
--	---	---	---	--

soon 217:2	started 149:25	251:24	257:2,3 264:2	ten 176:9 198:19
sooner 178:8,9	160:23,24 174:20	suit 183:6	265:25	ten-month 186:14
sorry 160:1 176:7	175:23 215:3	suits 254:7	taken 142:3 253:4	term 262:7,20
183:25 188:15	231:23 255:22	Sullivan 249:14	253:16 254:13	terms 161:14 213:4
190:21 219:17	264:12 266:16	260:7	269:11	253:21 254:25
260:5	State 142:4 161:11	summary 240:12	takes 150:3 155:22	262:14,18 266:21
sort 150:20 165:23	269:4,20	Summit 187:22	157:21 186:22	testified 145:2
175:20 181:6	statement 221:20	Superior 220:5	192:19 203:16	153:3 180:16
182:14	221:25 241:21	supply 258:15	217:14 231:2	188:11,24 189:9
spaces 228:1	STATES 141:1	Support 261:4	247:1	209:14 247:19,24
speak 166:13	Steinberg 217:25	supposed 165:23	talk 147:24 211:19	248:11,16 249:15
175:10 177:25	stenographic 142:1	221:6 224:1	253:20	testify 269:7
179:12 190:13	stenographically	sure 162:5 165:19	talked 145:17	testifying 153:7
speaking 167:13	269:11	171:4 173:18	148:23 160:15	testimony 253:5,9
187:5	step 215:23	174:9 191:8 193:8	185:7 224:16	262:23 269:10
specific 175:5	STONE 143:3	193:14 198:1	231:11 247:17	Thank 264:21
261:8	stop 177:20 182:2	204:17 206:23	253:7 264:13,14	267:25
specifically 167:6	216:15,16	221:23 233:13	talking 148:2 168:4	thanks 145:5
specimens 227:22	stopped 177:18	265:24	190:15 222:15	theory 146:1
split 148:9	215:4,5,6 216:15	sustained 213:5	254:21,25 256:5	thing 153:2 162:16
spoke 167:10,12	248:5,21	switch 257:3	258:3	184:12 190:22
184:2 188:23	story 190:17 192:5	sworn 145:1 268:7	target 192:16	196:14 199:23
190:9 233:15	straw 147:8 149:11	269:6	tax 155:4 169:12	215:3,19 238:22
251:16	149:14 151:2,14	symbols 202:17	206:2 209:1,17	248:1 254:23
spoken 179:20	166:12 167:8	system 160:11	220:3 221:17	things 147:3 149:9
183:15	232:3 247:3	171:9 196:6 258:7	237:15,16 243:16	149:17 150:1,21
Spring 176:17	Street 142:6 143:8	systemic 178:15	243:18,22,23	165:25 166:18
stamp 152:22	stretched 185:10	systems 258:2	244:13	175:21 180:13
207:14 222:12,23	stuff 181:11	SYSW 205:19,24	taxes 155:1 187:1	187:1 193:5 196:8
234:25 236:18	subject 192:15	206:5 207:2,14	221:3 224:9	211:17 241:22
stamped 156:16,22	253:4,12,15 262:5	219:17	telephone 233:16	253:12,16 254:10
157:5,11,16 204:1	263:19		Telephonically	254:18
205:19,24 206:5	subjects 253:13,14		181:22	think 152:20
218:5,17,22 219:5	Subparagraph	T 144:7 145:1	tell 148:1 149:7	161:12 162:2
219:16,20,25	235:5	table 241:17,24	152:10 170:8	163:18,19 164:20
234:20 240:10	subpoena 193:16	take 151:16 158:4	171:3,25 174:19	170:21 171:3
260:7	Subscribed 268:7	158:10 163:21	184:3,16,21	173:19,20,23,24
stamping 218:13	subsequently	168:23 181:8	185:25 190:23	174:17 176:5
standard 243:21	236:16	185:21 194:23	192:15 197:25	177:5 178:9
246:11 249:11	substance 190:18	195:4 203:14,22	231:5 233:16	179:14 180:20
stands 219:14	substantial 177:2	206:10 208:16,20	234:3,13 240:11	181:4 183:5 184:6
Stanley 141:12	successors 219:10	210:3 220:9	254:24 258:7,17	185:14 186:1
156:17 219:2,10	sue 228:24	225:11 231:8	260:9	187:11 188:3
234:5 240:14	sued 254:7	234:2,10 236:21	telling 169:10	190:8 191:7 192:3
242:14	sues 181:25	237:22 239:9,17	184:20	192:9 194:7
start 194:1	suggest 249:8	240:8 253:20	tells 240:13	204:16,24 205:1

212:15 214:12,14 224:18,25,25 225:17 226:4 232:23,24,25 233:21,23 242:5 247:13,19,24 248:4,10,11,13,24 248:24 249:5 250:19,24 252:3 253:14 255:14 266:15,19 267:7 <b>thinking</b> 178:14 <b>third</b> 236:22 242:13 <b>THOMAS</b> 141:12 <b>THOMSON</b> 142:6 <b>thought</b> 145:23 167:20 186:8 187:8 188:24 189:1 190:20 203:11 224:16 238:17,20 248:13 265:17,21 <b>three</b> 169:11 193:23,24 200:19 200:25 201:16,18 201:21 205:7 226:23 228:1 <b>tight</b> 266:11 <b>tile</b> 148:23 <b>time</b> 146:17,18 159:23 160:10,15 164:16 166:21 168:4 170:4 175:21 176:3 178:2,3,7 181:17 184:1,3 185:15 186:17,23 187:8 188:23 190:20 191:9,11 194:11 197:21 198:10 201:7 203:2,7 204:12,13 206:23 211:5 215:2 223:22,24 224:16 225:2 227:1	232:11 239:7 247:17 248:13 257:3,4,11 258:4 258:10,24 261:17 261:22 269:11 <b>times</b> 183:22 192:25 215:23 216:3 252:17 <b>title</b> 141:15,15,16 141:17 143:9,13 143:17,18 146:20 146:21,24 147:4 148:21 149:11,18 149:20 150:9,10 150:21 151:6,21 151:22 152:8 153:4,5,12,12 154:3,7,11,12,14 154:18,21 155:10 155:12 156:14,16 156:18,18,23 157:1,5,9,18 158:2,11,18,21,23 159:17 160:4 161:14,24 162:3,4 162:5,6,6,7,8,14 162:25 163:10,13 164:1,3,4,5 165:5 165:16 168:11 169:22 170:3,9,11 172:21 173:15,20 173:23 175:3,18 175:19 176:22,22 177:7 178:5,17 179:9 180:18,21 180:23 181:3,5,19 182:1,7 183:12 184:13,13,14 185:9,20 186:5 187:11,14,17 188:6,17 193:1 195:8,9,10 197:8 197:8,20 200:5,6 201:6,12,25 204:3 204:9,10,22 208:14,15,18,25	209:12,17 211:4,9 211:10,11,13 212:9,22 213:13 213:14 214:1,3,6 214:7,8,17 215:14 215:21,21,25 216:22 217:1,4,9 217:24 218:18,20 218:21,23 219:2,3 219:5,21 226:9 227:24 229:1,5 230:1,5,6,8,17,18 230:19,25 234:5 235:23 236:24 237:2 239:10 241:8 242:2,7 246:4,8 247:20 249:8 250:2,6,18 250:20,22 251:1,4 251:16,17,24 252:20 253:18,20 257:18,21 260:18 261:4,8 262:8,9 262:10,21 265:2,2 265:6,22 <b>Title's</b> 150:13 152:21 <b>today</b> 146:2 159:10 159:12 208:24 265:10 <b>told</b> 148:18 152:2 165:9 167:19 177:19 178:16,21 179:1 184:13 190:1,21 192:17 233:24 247:9 <b>Tom</b> 191:11,18 <b>top</b> 195:17 220:13 266:4 <b>transaction</b> 158:8 219:11 240:13 <b>transactions</b> 174:5 174:21 175:25 176:2,25 177:5 183:17 188:13 193:3 197:20	204:19 208:5 216:20 242:22 243:11 247:6 <b>transcript</b> 142:1 145:7 190:4 269:10 <b>transfer</b> 219:13 224:9 226:18 237:13,15,24 238:2 239:2,15 <b>transferred</b> 209:18 211:8 <b>transferring</b> 157:14 209:12 210:23,24 217:24 223:14 <b>translate</b> 253:19 <b>transmitted</b> 262:24 263:3 <b>treasurer's</b> 187:22 188:7 <b>Trebour</b> 180:11 <b>tried</b> 238:8 <b>true</b> 258:22,23 269:10 <b>trust</b> 157:8 160:3 161:21,22,22 187:5 219:16 224:8 236:15 245:21,24 253:8 254:24 255:2,12 256:13,20 264:14 <b>trustee</b> 255:12,15 <b>truth</b> 269:7,7,8 <b>try</b> 266:25 <b>trying</b> 150:20 152:1 171:1 173:22,25 175:20 177:6 186:13 225:1 258:12 259:2,14 <b>TSS</b> 261:4,12,12,16 262:2 <b>TSS's</b> 261:25 <b>turn</b> 150:12 159:7 160:2 181:14,16 188:17 193:17	207:2,13 <b>turned</b> 147:5 172:11 173:1 180:17 193:6,12 <b>Turning</b> 221:4 <b>two</b> 171:5,10 174:4 180:6 192:25 194:6,19,24 195:5 195:8 196:19 200:1,1,3 218:11 221:14 253:12 <b>two-page</b> 260:8 <b>type</b> 215:19 254:10 257:23 <b>typed</b> 207:18 <b>types</b> 267:19 <b>typewriter</b> 259:21 <b>typist</b> 168:13 <hr/> <b>U</b> <b>Uh-huh</b> 177:11 187:13 203:19 207:12 <b>ultimate</b> 154:23 166:11 <b>ultimately</b> 148:11 160:13 256:3 263:5 <b>unapproved</b> 247:18,20 248:1 249:22,25 251:5 251:18 252:2,6 <b>unauthorized</b> 225:19 <b>uncover</b> 185:11 <b>uncovered</b> 184:17 <b>underlying</b> 154:3 155:3 183:10 <b>underneath</b> 237:22 <b>understand</b> 165:19 175:9 213:25 241:16 262:22 <b>understanding</b> 162:19 166:17 185:5 <b>undertook</b> 182:18
---	---	--	--	--

<b>underwriter</b> 162:11,13,14 180:10 181:15 183:17 251:8 262:24 263:3 267:3	<b>vests</b> 214:3 <b>viewed</b> 200:21 <b>violate</b> 231:13 <b>Viscardo</b> 171:24 <b>vividly</b> 167:12 <b>void</b> 238:1 <b>voided</b> 238:11 239:3 <b>voiding</b> 237:23,25 238:14,15 <b>VOLUME</b> 141:5 <b>volumes</b> 176:15 <b>vs</b> 141:5	235:17 238:7,17 241:25 244:16 249:4 <b>way</b> 155:5 161:8 165:25 172:1,8 203:8 204:24 229:24 244:14,25 250:16 257:23 261:24 266:11 <b>website</b> 220:7 243:14 <b>week</b> 170:2 <b>weeks</b> 221:14 <b>WEICHERT</b> 141:18 <b>went</b> 171:8 176:4 185:8 199:8 223:7 <b>WERBEL</b> 143:10 <b>weren't</b> 177:15 179:6 185:22 224:12 235:18 <b>West</b> 142:6 <b>we're</b> 145:22 162:9 162:23 168:20 177:20 178:17,22 192:24 214:24 243:1 254:14,21 256:5 258:3 <b>we've</b> 156:21 164:23 174:20 175:17 177:4 187:6 204:15 210:18 216:2 217:17 235:4,4,21 252:17 <b>whatnot</b> 177:10 <b>whichever</b> 259:19 <b>wife</b> 213:8 <b>WILLIAM</b> 141:10 <b>Willis</b> 191:19 <b>Winter</b> 176:16 <b>wire</b> 219:13 <b>wired</b> 241:22 <b>withdrawn</b> 263:22 <b>witness</b> 144:2 213:5 214:13,19,23	220:24 238:19 246:17 <b>woman</b> 150:18 <b>wondering</b> 223:9 <b>word</b> 262:10 <b>work</b> 150:24 154:18,21 155:4,6 161:2,2,7,9 165:5 174:7,13 175:6,7 175:8 197:20 204:19 230:3 247:21 248:5,8,12 251:20 260:15 261:1 266:23 <b>worked</b> 206:22 <b>working</b> 171:11,17 <b>works</b> 161:9 <b>wouldn't</b> 154:16,20 164:12,12 168:6 171:13 179:7 210:7,8,9 214:8 226:22 242:8 <b>write</b> 196:15 <b>writing</b> 231:5 238:18 <b>written</b> 220:13 239:8 261:7 <b>wrong</b> 178:22 266:24 <b>wrote</b> 199:5 <b>WSWT</b> 234:20 260:7	204:21 205:20 206:2,6 209:6 210:5,12,16 219:2 219:10,21 221:6 224:8,11 226:6 231:25 233:10,11 234:5 238:1,6,10 239:20 240:14 241:13 242:15 247:25 248:5 252:1,8 <b>Yacker's</b> 157:8 160:3 167:22 204:20 205:23 206:4 219:16 236:15 <b>yeah</b> 165:6,13 174:14 193:8 196:15 198:24 199:22 201:22 205:1 222:14,18 234:22 238:16 243:5 255:1 265:8 <b>year</b> 176:13 194:3 194:6,8,20,21 258:1 <b>years</b> 184:6 193:23 193:24 194:7 225:23 234:23 248:25 250:9 263:4 <b>yesterday</b> 145:18 147:1 167:24 209:14 248:17 <b>York</b> 141:16,17 143:17,18
<b>unusual</b> 201:23 225:17 226:1 235:17,19 <b>update</b> 174:12 <b>updating</b> 174:14 <b>use</b> 174:18 175:3 250:1,6 260:1,17 260:20 261:3 262:7 <b>useless</b> 211:3 <b>usual</b> 145:16 165:15 167:11 181:18 <b>U.S</b> 191:12 193:17	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7
<b>valid</b> 212:24 <b>various</b> 148:20 150:11 156:19 187:1 245:20 261:9 <b>vary</b> 235:16 <b>VECCHIO</b> 141:18 <b>venture</b> 147:7,21 147:22 149:3,6 205:15 207:3 218:6 225:12 231:10 232:24,25 233:7,19,24 <b>versions</b> 265:6,7 <b>vested</b> 211:4,5 214:4,6	<b>V</b> <b>valid</b> 212:24 <b>various</b> 148:20 150:11 156:19 187:1 245:20 261:9 <b>vary</b> 235:16 <b>VECCHIO</b> 141:18 <b>venture</b> 147:7,21 147:22 149:3,6 205:15 207:3 218:6 225:12 231:10 232:24,25 233:7,19,24 <b>versions</b> 265:6,7 <b>vested</b> 211:4,5 214:4,6	<b>V</b> <b>valid</b> 212:24 <b>various</b> 148:20 150:11 156:19 187:1 245:20 261:9 <b>vary</b> 235:16 <b>VECCHIO</b> 141:18 <b>venture</b> 147:7,21 147:22 149:3,6 205:15 207:3 218:6 225:12 231:10 232:24,25 233:7,19,24 <b>versions</b> 265:6,7 <b>vested</b> 211:4,5 214:4,6	<b>V</b> <b>valid</b> 212:24 <b>various</b> 148:20 150:11 156:19 187:1 245:20 261:9 <b>vary</b> 235:16 <b>VECCHIO</b> 141:18 <b>venture</b> 147:7,21 147:22 149:3,6 205:15 207:3 218:6 225:12 231:10 232:24,25 233:7,19,24 <b>versions</b> 265:6,7 <b>vested</b> 211:4,5 214:4,6	<b>V</b> <b>valid</b> 212:24 <b>various</b> 148:20 150:11 156:19 187:1 245:20 261:9 <b>vary</b> 235:16 <b>VECCHIO</b> 141:18 <b>venture</b> 147:7,21 147:22 149:3,6 205:15 207:3 218:6 225:12 231:10 232:24,25 233:7,19,24 <b>versions</b> 265:6,7 <b>vested</b> 211:4,5 214:4,6
<b>whatnot</b> 177:10 <b>whichever</b> 259:19 <b>wife</b> 213:8 <b>WILLIAM</b> 141:10 <b>Willis</b> 191:19 <b>Winter</b> 176:16 <b>wire</b> 219:13 <b>wired</b> 241:22 <b>withdrawn</b> 263:22 <b>witness</b> 144:2 213:5 214:13,19,23	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7
<b>whatnot</b> 177:10 <b>whichever</b> 259:19 <b>wife</b> 213:8 <b>WILLIAM</b> 141:10 <b>Willis</b> 191:19 <b>Winter</b> 176:16 <b>wire</b> 219:13 <b>wired</b> 241:22 <b>withdrawn</b> 263:22 <b>witness</b> 144:2 213:5 214:13,19,23	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7
<b>whatnot</b> 177:10 <b>whichever</b> 259:19 <b>wife</b> 213:8 <b>WILLIAM</b> 141:10 <b>Willis</b> 191:19 <b>Winter</b> 176:16 <b>wire</b> 219:13 <b>wired</b> 241:22 <b>withdrawn</b> 263:22 <b>witness</b> 144:2 213:5 214:13,19,23	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 244:20,25 255:3,8,13,13 <b>Walsh's</b> 174:24 <b>want</b> 145:10,11 165:21 170:6 171:23 243:21 252:23 253:3,11 253:19,20 <b>wanted</b> 147:25 170:24 189:24 247:21 251:13 253:24 <b>wanting</b> 233:25 <b>washed</b> 225:3 <b>wasn't</b> 146:14 174:9 201:22 221:16,23 222:6,7
<b>whatnot</b> 177:10 <b>whichever</b> 259:19 <b>wife</b> 213:8 <b>WILLIAM</b> 141:10 <b>Willis</b> 191:19 <b>Winter</b> 176:16 <b>wire</b> 219:13 <b>wired</b> 241:22 <b>withdrawn</b> 263:22 <b>witness</b> 144:2 213:5 214:13,19,23	<b>W</b> <b>Wagner</b> 143:4 210:21 223:13 <b>WALKER</b> 143:4 <b>Walsh</b> 141:3 153:21 154:1 171:24 172:14,19 172:20 174:22 175:8,10 179:1,5 179:9,20,22 180:7 180:15 183:7 184:17,21,24 188:24 205:10 212:1 219:13,25 220:1 241:13,16 241:23 2			



221:21,21,22 <b>\$100</b> 161:12 <b>\$105</b> 161:12 <b>\$186,500</b> 221:13 <b>\$200,000</b> 194:12 <b>\$250</b> 226:3 <b>\$3</b> 194:19 <b>\$50,000</b> 194:6 225:5 <b>\$60,000</b> 187:9 <b>\$77,500</b> 157:15 <b>\$81</b> 237:20,25 <b>\$875</b> 217:8	<b>1192</b> 218:23 <b>1198</b> 218:2 <b>12</b> 157:12 218:22 229:25 231:4 <b>12/9/1996</b> 155:24 156:18 <b>12/9/96</b> 144:9 <b>1200</b> 218:2 <b>1202</b> 218:5 <b>1204</b> 218:6 <b>1205</b> 219:20 <b>1234</b> 219:23 240:10 <b>13</b> 156:14 157:17 163:20,21 164:24 166:24 201:19 205:25 219:1 234:3 <b>138</b> 217:24 218:4,8 219:4,11 220:4,20 234:5 236:23 243:14 255:19 <b>14</b> 156:1,23 158:1 159:8 169:20 176:10 219:20 226:10,16 239:18 <b>145</b> 144:4 <b>15</b> 157:18 166:25 187:6 219:15 236:14 <b>150</b> 143:4 147:5 186:6 <b>150,000</b> 150:1 <b>155</b> 144:9 205:12 206:9,15 209:25 213:10 <b>156</b> 144:9,10,10,11 144:11,12 <b>157</b> 144:12 <b>16</b> 197:17 198:8 200:22 207:2 219:22 220:23,24 220:25 226:18 235:23 240:9 <b>17</b> 175:18 177:7,8 177:13 209:5 219:24 240:24	241:1 246:11 <b>18</b> 196:1 198:18 206:1 209:11 210:3 217:20 220:2 243:13 <b>185</b> 144:13 <b>186</b> 221:23,23 <b>18724</b> 226:11 <b>18904</b> 158:21 164:5 171:6,8 <b>18904(A)</b> 164:5 171:7 <b>19</b> 217:24 220:20 220:23 <b>1982</b> 201:19 <b>1986</b> 201:19 <b>1995</b> 174:22 175:24 207:21 <b>1996</b> 174:19 175:25 176:7,8 177:4 178:18 185:11 186:2 197:17 205:16,18 207:16 217:24 218:3 219:2 220:21 226:10,16 235:21 235:23 <b>1997</b> 156:2,3,6,24 157:2,4,9,16,23 158:4 159:8 168:12,25 169:20 169:25 176:5,7 177:9 178:18 185:9 187:23 191:9 199:21 203:21 204:17 206:1,1,7 218:10 247:9 <b>1998</b> 191:9	248:24 <b>2002</b> 220:9 243:17 244:8 <b>2005</b> 194:22 <b>2007</b> 194:9 <b>2010</b> 142:7 260:6 268:8 269:22 <b>2013</b> 269:21 <b>23</b> 201:19 203:18 244:8 252 144:4 <b>26</b> 203:21 205:16 205:18 207:16 <b>26050</b> 236:24 <b>2625</b> 237:9 <b>26250</b> 237:19 <b>264</b> 144:4 <b>267</b> 144:4 <b>27</b> 260:5 <b>27th</b> 217:18 <b>2778</b> 157:5 <b>2779</b> 156:22 <b>2784</b> 156:17 <b>28</b> 156:5 157:4 168:25 176:7,8 177:3 <b>28372838</b> 157:17 <b>2892</b> 157:11 <b>29</b> 157:23 158:4 169:20,25	<b>4</b> <b>4/19/97</b> 144:13 <b>4/9/97</b> 144:10 <b>40</b> 147:13 218:9 <b>400</b> 176:18 <b>44744</b> 219:25 <b>44746</b> 220:1 <b>45</b> 196:22 <b>4516</b> 205:24 <b>4518</b> 205:24 <b>4519</b> 205:19 <b>4520</b> 207:3 <b>4525</b> 205:19 <b>4536</b> 206:5 <b>4546</b> 206:5 <b>47746</b> 242:13 <b>488</b> 187:21
<b>0</b> <b>000505</b> 260:8 <b>04523</b> 207:14 <b>07078</b> 143:5 <b>07102-4056</b> 143:8 <b>08543-5231</b> 143:15 <b>08648-2311</b> 143:16 <b>08818</b> 143:12	<b>1</b> <b>1</b> 187:23 230:10 <b>1,113</b> 239:12 <b>1/14/97</b> 144:9 <b>1/28/97</b> 144:10 <b>10</b> 157:4 159:25 168:24 206:7 218:4 225:12 <b>10:25</b> 142:7 <b>100</b> 143:8 192:4 <b>1017-1019</b> 150:19 152:5 <b>105</b> 217:6 <b>11</b> 157:7,12 160:2 218:16 219:20 228:9 <b>1150</b> 219:5 <b>1151</b> 219:5 <b>1154</b> 218:17 <b>1157</b> 228:9 <b>1159</b> 227:4 <b>1161</b> 227:18 <b>1166</b> 218:18 <b>1188</b> 218:23	<b>2</b> <b>2</b> 230:14 <b>2(a)</b> 200:4 <b>20</b> 176:6,8 177:3 <b>200</b> 176:4,9,12 <b>2000s</b> 194:14,18	<b>3</b> <b>3</b> 143:11 157:16 163:23 199:24 200:3 269:21 <b>3rd</b> 164:7,10 <b>3:42</b> 268:1 <b>30</b> 219:2 235:21 <b>30(b)6</b> 217:17 <b>3012</b> 143:11 <b>31</b> 157:9 218:3 220:8 243:17 <b>31st</b> 160:12 163:19 164:9 <b>36</b> 142:6 <b>39</b> 196:22 199:15	<b>5</b> <b>5</b> 142:7 196:4,5,6 247:8 <b>5/29/97</b> 144:12 <b>50</b> 176:23 186:25 187:9 <b>50,000</b> 187:10 <b>505</b> 219:14 <b>506</b> 219:14 234:20 <b>51</b> 247:8 <b>515</b> 156:20,24 157:2,15,19 158:3 158:8,18,24 <b>5231</b> 143:15 <b>5589</b> 196:21 199:15
				<b>6</b> <b>6</b> 234:10 <b>6(A)</b> 219:6 260:5 266:1 <b>60</b> 147:10 218:7 232:3 <b>60,000</b> 186:25 <b>60/40</b> 148:9 205:15 <b>6166</b> 196:17
				<b>7</b> <b>7</b> 156:14,15 158:11

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

218:10	223:10 232:22,25			
7th 156:20,24	248:17 249:19			
157:2,15,19 158:3	97-cv-3496 141:2			
158:8,18,24	997 143:16			
7/15/97 144:12	9997 157:18			
156:11				
7/18 195:20,23,25				
7/64 203:5				
7/8/96 198:12				
70 219:17				
707.50 237:11,24				
7083 219:17 236:22				
7084 236:19 239:9				
7085 219:17				
7086 219:18				
75 176:23				
<hr/>				
8				
8 156:22 159:8				
199:21 217:19,22				
220:12 222:11				
235:22				
8th 186:7				
8/5 195:20				
8932 204:1				
<hr/>				
9				
9 156:3,25 157:2				
160:1 165:2				
168:10,12 207:20				
218:1,2 222:23				
225:10 269:22				
9th 165:6 186:7				
90 161:12				
90s 248:23 257:10				
96 165:2 170:16				
174:24 175:2				
177:6 178:11				
186:2,11 192:3				
198:8 200:22				
223:8 249:19				
97 147:6 163:19,23				
164:8,9,10 166:4				
166:21 170:16				
173:4 175:25				
178:7 186:3,8,9				
191:7 192:4				

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400